Union Calendar No. 670

98TH CONGRESS *2d Session*	HOUSE OF REPRESENTATIVES	REPORT NO. 98-1187

SUMMARY OF ACTIVITIES

A REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

JANUARY 2, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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NINETY-EIGHTH CONGRESS

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GENE CHAPPIE, California
SHERWOOD L. BOEHLERT, New York
MICHAEL BILIRAKIS, Florida
DAN SCHAEFER, Colorado [5]

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[1] Mr. Ireland resigned from the Democrat Roster of the Small Business Committee September 11, 1984.

[2] Mr. McCloskey resigned from the Small Business Committee November 17, 1983.

[3] Mr. Hayes was elected to the Small Business Committee November 3, 1983.

[4] Mr. Ireland was elected to the Small Business Committee on the Republican Roster on September 18, 1984.

[5] Mr. Schaefer was elected to the Small Business Committee April 21, 1983.

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GENE CHAPPIE
MICHAEL BILIRAKIS

LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, January 2, 1985.

Hon. BENJAMIN J. GUTHRIE,
Clerk, House of Representatives,
Washington, DC.

DEAR MR. GUTHRIE: On behalf of the Committee on Small Business of the House of Representatives, I am pleased to submit this report "Summary of Activities" covering the 98th Congress.

As past reports on Committee activities, it is deemed that this reference document will be of assistance to all Members of the Committee and Congress as a research tool and historic reference outlining the activities of the Committee on Small Business during the 98th Congress.

This report is filed in conformity with the requirements of Rule XI 1(d) respecting the activities of the Committee and in carrying out its duties as stated in the Rules of the House of Representatives.

Best wishes,

PARREN J. MITCHELL, *Chairman.*

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Union Calendar No. 670

98TH CONGRESS *2d Session* | HOUSE OF REPRESENTATIVES | REPORT 98-1187

SUMMARY OF ACTIVITIES

JANUARY 2, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL of Maryland, from the Committee on Small Business, submitted the following

REPORT

SUMMARY OF ACTIVITIES

CHAPTER 1.—INTRODUCTION

This is the fifth summary report of the standing Committee on Small Business. The action by the House of Representatives in adopting H. Res. 988 on October 8, 1974, providing that the committee be established as a standing committee, upgraded the Permanent Select Committee on Small Business by giving the committee legislative jurisdiction over small business matters in addition to the oversight jurisdiction it previously exercised.

The adoption of the House Rules in the 94th through the 98th Congresses confirmed this action and culminated the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. The work of this committee was perpetuated by each succeeding Congress. In January 1971, the House designated the Select Committee as a permanent Select Committee and on October 8, 1974, the 93d Congress, recognizing the importance of the work performed, provided that the committee should thereafter be established as a standing committee.

HISTORICAL BACKGROUND

The history of the Select Committee on Small Business from its inception in 1941 during the 77th Congress to and through 1972, the conclusion of the 92d Congress, may be found in House Document 93-197 (93d Congress, 2d session) entitled, "A History and Ac-

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complishments of the Permanent Select Committee on Small Business."

The committee is bipartisan recognition that the Nation's small business people represent a major segment of our business population and our Nation's strength. This committee, continuing its vital oversight responsibilities, serves as the advocate and spokesman for small business as well as the hub for small business legislation.

In recognition of this expanded jurisdiction, the House of Representatives has increased committee membership to 40 Members. The following Members were named to constitute the committee in the 98th Congress.

Parren J. Mitchell (D-Md.), Chairman; Neal Smith (D-Iowa); Joseph P. Addabbo (D-N.Y.); Henry B. Gonzalez (D-Tex.); John J. LaFalce (D-N.Y.); Berkley Bedell (D-Iowa); Henry J. Nowak (D-N.Y.); Thomas A. Luken (D-Ohio); Andy Ireland, (D-Fla.);[1] Ike Skelton (D-Mo.); Charles W. Stenholm (D-Tex.); Romano L. Mazzoli (D-Ky.); Nicholas Mavroules (D-Mass.); Charles Hatcher (D-Ga.); Ron Wyden (D-Oreg.); Dennis E. Eckart (D-Ohio); Gus Savage (D-Ill.); Buddy Roemer (D-La.); Norman Sisisky (D-Va.); Frank McCloskey (D-Ind.);[2] Esteban Edward Torres (D-Calif.); Tom J. Vandergriff (D-Tex.); Jim Cooper (D-Tenn.); James R. "Jim" Olin (D-Va.); C. Robin Britt (D-N.C.); Richard Ray (D-Ga.); Charles A. Hayes (D-Ill.);[3] Joseph M. McDade (R-Pa.); Silvio O. Conte (R-Mass.); William S. Broomfield (R-Mich.); Lyle Williams (R-Ohio); John Hiler (R-Ind.); Vin Weber (R-Minn.); Hal Daub (R-Nebr.); Christopher H. Smith (R-N.J.); David Dreier (R-Calif.); Guy V. Molinari (R-N.Y.); Toby Roth (R-Wis.); Gene Chappie (R-Calif.); Sherwood L. Boehlert (R-N.Y.); Michael Bilirakis (R-Fla.); Dan Schaefer (R-Colo.);[4] Andy Ireland (R-Fla.).[5]

EXTRACT FROM THE RULES OF THE HOUSE OF REPRESENTATIVES AS ADOPTED BY HOUSE RESOLUTION 5, 98TH CONGRESS

"RULE X.—ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

"THE COMMITTEES AND THEIR JURISDICTION

"1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

"(s) Committee on Small Business.

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[1] Mr. Ireland resigned from the Democrat Roster of the Small Business Committee September 11, 1984.

[2] Mr. McCloskey resigned from the Small Business Committee November 17, 1983.

[3] Mr. Hayes was elected to the Small Business Committee November 3, 1983.

[4] Mr. Schaefer was elected to the Small Business Committee April 21, 1983.

[5] Mr. Ireland was elected to the Small Business Committee on the Republican Roster on September 18, 1984.

"(1) Assistance to and protection of small business, including financial aid.

"(2) Participation of small-business enterprises in Federal procurement and Government contracts.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight functions under clause 2(b)(1)); the committee shall have the special oversight function provided for in clause 3(g) with respect to the problems of small business."

"GENERAL OVERSIGHT RESPONSIBILITIES

"2. (b)(1) Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee. Each such committee having more than twenty members shall establish an oversight subcommittee, or require its subcommittees, if any, to conduct oversight in the area of their respective jurisdiction, to assist in carrying out its responsibilities under this subparagraph. The establishment of oversight subcommittees shall in no way limit the responsibility of the subcommittees with legislative jurisdiction from carrying out their oversight responsibilities."

"2. (d) Each standing committee of the House shall have the function of reviewing and studying on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3."

"SPECIAL OVERSIGHT FUNCTIONS

"3. (g) The Committee on Small Business shall have the function of studying and investigating, on a continuing basis, the problems of all types of small business."

"RULE XI

"RULES OF PROCEDURE FOR COMMITTEES

"In General

"1. * * *

* * * * * * *

"(b) Each committee is authorized at any time to consider such investigations and studies as it may consider necessary or appropriate in the exercise of its responsibilities under Rule X, and (subject to the adoption of expense resolutions as required by clause 5) to incur expenses (including travel expenses) in connection therewith."

* * * * * * *

"Power to Sit and Act; Subpena Power

"(m)(1) For the purpose of carrying out any of its functions and duties under this rule and Rule X (including any matters referred to it under clause 5 of Rule X), any committee, or any subcommittee thereof, is authorized (subject to subparagraph (2)(A) of this paragraph)—

"(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings, and

"(B) to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. The chairman of the committee, or any member designated by such chairman, may administer oaths to any witness.

"(2)(A) A subpena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of any investigation or series of investigations or activities, only when authorized by a majority of the members voting, a majority being present. The power to authorize and issue subpenas under subparagraph (1)(B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe. Authorized subpenas shall be signed by the chairman of the committee or by any member designated by the committee.

"(B) Compliance with any subpena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House."

NUMBER AND JURISDICTION OF SUBCOMMITTEES

During the 98th Congress, the House Small Business Committee was organized into six standing subcommittees. The chairman and the ranking minority member served an *ex officio* members of all subcommittees, without vote. The full committee and each of its subcommittees have authority to examine problems of small busi-

ness in government contracting. The jurisdiction of the six named subcommittees includes the following:

I. SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

Access to SBA services.
Illegal activities affecting small business.
Minority enterprise.
SBA and SBIC authorizations.

II. GENERAL OVERSIGHT AND THE ECONOMY

General economic problems affecting small business.
General oversight of activities of Government agencies and legislation affecting small business.
Postal Service.
Procurement.
Small Business Innovation Development Act.

III. ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS

Anticompetitive activities affecting small business.
Federal Trade Commission and antitrust activities.
Robinson-Patman Act.
Sherman and Clayton Acts.
Unassigned regulatory agency activities.

IV. ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS

Department of Energy and related agencies.
Energy allocations, marketing, etc.
Energy research and development contracts.
Impact of pollution laws and EPA rules.
Marketing of petroleum products.
Occupational Safety and Health Administration.
Science boards and commissions.
Tennessee Valley Authority.

V. TAX, ACCESS TO EQUITY CAPITAL AND BUSINESS OPPORTUNITIES

Access to equity capital.
Banking practices.
EDA.
Franchising practices.
HUD policies affecting small business.
Impact of tax policies on small business.
Job creation.
SEC handling of ventures.

VI. EXPORT OPPORTUNITIES AND SPECIAL SMALL BUSINESS PROBLEMS

Export opportunities for small business.
Reduction of unnecessary paperwork.
Regulatory Flexibility Act.

Various communications matters affecting small business.

Various Federal regulatory policies and programs affecting small business.

Various transportation matters affecting small business.

DISPOSITION OF LEGISLATION REFERRED TO COMMITTEE

The Committee on Small Business, at the close of the Second Session, has completed action on the majority of legislation referred for its consideration during the 98th Congress. A total of sixty-three House bills, two House Concurrent Resolutions and one Senate bill were referred to this Committee. Forty-nine were considered and enacted into law, passed the House or were otherwise disposed of; and seventeen await further action.

The Committee's bill H.R. 861 which provided both Section 8(a) Pilot Program and Surety Bond Pilot Program Extensions, was enacted on July 13, 1983, as Public Law 98-47. Commerce Business Daily Amendments to improve small business access to Federal Procurement information, H.R. 1043, was enacted on August 11, 1983 as Public Law 98-72. A temporary Small Business Development Center Extension Bill, H.R. 4013, was enacted on November 29, 1983, as Public Law 98-177. The White House Conference on Small Business Authorization Act, H.R. 5298, was enacted on May 8, 1984, as Public Law 98-276. The Small Business Secondary Market Improvement Act of 1984, H.R. 4773, was enacted on July 10, 1984 as Public Law 98-352. Small Business Computer Crime Security and Education Act, H.R. 3075, was enacted on July 16, 1984, as Public Law 98-362. The Small Business Development Center Improvement Act of 1984, H.R. 5334, was enacted on August 2, 1984, as Public Law 98-395. The Small Business and Federal Procurement Competition Enhancement Act of 1984, H.R. 4209, was enacted on October 30, 1984 as Public Law 98-577.

In following the Committee's policy of consolidating related measures amending the Small Business Act and the Small Business Investment Act of 1958 into omnibus legislation whenever possible, numerous such measures were combined into the bill H.R. 3020 (H. Rpt. 98-182) which passed the House on March 15, 1984. Provisions governing SBA disaster relief assistance loans and related non-physical disaster loans, (also contained in H.R. 3020) were enacted in the "Omnibus Budget Reconciliation Act of 1983," Public Law 98-270. Further disaster enabling provisions were enacted as part of the FY 1985 Continuing Resolution. (Public Law 98-473).

H.R. 6013 (H. Rpt. 98-914), a bill to amend the authorizations for certain SBA programs and to help in providing financing for pollution control facilities was reported from the Committee on July 27, 1984, and passed the House under suspension of the rules on July 30, 1984. This legislation was enacted through provision of the FY 1985 Continuing Resolution (Public Law 98-473).

The Small Business Competition for Federal Procurements, H.R. 2133 (H. Rpt. 98-541) was partially enacted in provisions of H.R. 4209 (Public Law 98-577). The Women's Business Ownership Act of 1984, H.R. 3832 (H. Rpt. 98-750 Part I), was not acted on by the House.

Appropriations Acts in the 98th Congress, while providing funding for Small Business Administration programs and salaries and expenses, also accomplished Committee objectives for program clarification or changes, e.g., approval of use of guaranteed debentures in the SBA's 503 Development Company Program in connection with obligations under section 103(b) of the Internal Revenue Code of 1954 (Public Law 98–8); natural resources development programs (accomplishing objectives of H.R. 407) under section 21(a)(1) of the Small Business Act (Public Law 98–8); further necessary changes and disaster declaration clarification (Public Law 98–166 and the FY 1985 Continuing Resolution); provisions on SBA's comprehensive statistical data base on the small business sector in the U.S. economy. (Public Law 98–411).

CHAPTER 2.—THE SMALL BUSINESS ADMINISTRATION

The Committee on Small Business has both legislative and oversight jurisdiction over the Small Business Administration, an independent Federal agency chartered in 1953 to "aid, counsel, assist and protect" the interests of small business.

During the 98th Congress, the Committee conducted extensive oversight activities relating to SBA, including many hearings in both Washington and throughout the country. The Committee has attempted to work with SBA to improve its programs administratively and, when necessary, legislatively. A variety of SBA related legislation was recommended by the Committee during the 98th Congress, and these bills and their disposition are described elsewhere in this report.

A brief synopsis of major SBA program activity follows. A complete and detailed description of all SBA programs is published as a committee print, "Summary of SBA Programs".

SBA PROGRAMS IN GENERAL

The SBA operates through 119 regional, district and branch offices and has a staff of approximately 3,900 employees. It provides loans and loan guarantees, both for business purposes and disaster recovery; assistance to small businesses in obtaining Government contracts; and management and technical assistance through paid and volunteer staff. It also administers a surety bond program for contractors unable to obtain bonds which are prerequisite to performing contracts and a pollution control guarantee program to assist small businesses in financing pollution control facilities. SBA also serves as an advocate for all small businesses, conducts economic research, and monitors the implementation of small business legislation and programs at other agencies, such as the Regulatory Flexibility Act and the Small Business Innovation Research Program.

The SBA administers an outstanding loan portfolio of $16 billion of which $5 billion is comprised of loans to disaster victims. Authorized program levels for 1985 provide for $3.702 billion in financial assistance, up to $600 million in disaster loans, surety bond guarantees of $1.115 billion, and pollution control guarantees of $150 million, and administrative expenses of $234 million.

SBA BUSINESS LOANS

A major function of SBA is to make capital available for those small businesses which cannot normally secure financing in the private sector. In addition to its general business loan program, SBA has specialized programs to help businesses owned by socially and economically disadvantaged individuals, businesses owned by or employing primarily the handicapped, businesses owned by vet-

erans, businesses in need of long-term fixed asset financing, and businesses in the area of marketing new energy and energy conservation technology.

Most SBA financial assistance is provided in the form of guarantees of commercial loans. Such guarantees can be for as much as 90 percent of the loan up to a maximum amount of $500,000. The interest rates on guaranteed loans are negotiated between the borrower and lender, subject in most areas to a maximum of 2¾ percent above the prime rate. In fiscal 1984, SBA approved 19,036 guaranteed loans, the guaranteed portions totalling $2.855 billion; in fiscal 1983, the agency approved 17,198 guaranteed loans, the guaranteed portions totalling $2.426 billion.

Applicants who cannot obtain commercial loans, even with a government guarantee, are eligible to apply for SBA direct loans. These loans are in most cases limited to $150,000, and their interest rate is determined by a formula relating to the government's cost of borrowing. (As of October 1, 1984 the rate was 13⅞ percent). In fiscal 1984, SBA approved 2,236 direct and immediate participation (part SBA direct, part bank) loans for $144.7 million; in fiscal 1983, the agency approved 1,994 such loans for $123.6 million.

SMALL BUSINESS INVESTMENT COMPANIES

There has been a continuing need for venture capital for new and growing small businesses. Small business historically has been the seedbed for new technological development and expansion. An important source of this venture capital has been SBA's Small Business Investment Company (SBIC) Program.

SBIC's supply equity capital and long-term loan financing to small firms for expansion, modernization, and sound financing of their operations. They may also provide management assistance. They are licensed, regulated and, in part, financed by SBA, but their transactions with small companies are private arrangements and have no connection with SBA. An SBIC finances small firms in two general ways—by straight loans and by venture capital or equity-type investments. In fiscal 1984, 404 licensed SBIC's provided their small business clients with $398.3 million in 2,515 financings. In fiscal 1983, $397.7 million was provided in 2,568 financings.

SBA also administers a Minority Enterprise Small Business Investment Company (MESBIC) Program similar to the SBIC program. MESBIC's are specialized SBIC's which agree to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. In fiscal 1984, 160 licensed MESBIC's provided disadvantaged small businesses with $77.1 million in 1,074 financings. In fiscal 1983, $54.9 million was provided in 813 financings.

THE 8(a) PROGRAM

In addition to the financial assistance programs available to businesses owned by socially and economically disadvantaged individuals, SBA also administers a business development program for such concerns, pursuant to Section 8(a) of the Small Business Act.

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Through this program SBA acts as a "conduit" by channeling selected Federal procurement contracts to qualified firms owned and operated by socially and economically disadvantaged individuals. In fiscal year 1984, 4,980 8(a) contracts were let to 1,716 businesses for a total of $2.6 billion. In fiscal year 1983, 4,909 contracts amounting to $2.3 billion were let to 1,551 firms.

DISASTER ASSISTANCE

The Small Business Administration provides loan assistance to disaster victims, including homeowners, businesses, and nonprofit institutions. When disaster strikes it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital for recovery as soon as possible. SBA disaster loans serve this purpose and minimize disruptions of jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of a disaster-stricken community, often making the difference in the survival of business necessary to that recovery.

During fiscal 1984, 14,133 disaster loans were approved for more than $314 million to businesses, homeowners, and others affected by hurricanes, tornadoes, earthquakes, flooding, windstorms, hail, mudslides, fires, and other disasters. During fiscal 1983, 12,233 disaster loans were approved for more than $198 million.

Major legislative changes were made in SBA's disaster loan programs in 1984, and these revisions are explained elsewhere in this report.

SURETY BOND GUARANTEES

Small business contractors and subcontractors who seek public (and some private) construction jobs are often required to furnish surety bonds. SBA can assist such contractors by extending a guarantee to a surety of up to 90 percent against loss in order to make bonding more easily obtainable. Bid bonds as well as payment and/or performance bonds may be guaranteed on contracts of up to $1,000,000.

In fiscal 1984, $571 million in surety bond guarantees were extended; and in fiscal 1983, $567 million in guarantees were approved.

MANAGEMENT ASSISTANCE

SBA's management assistance programs support SBA loan recipients and other small business owners/managers through individual counseling, management training and publication of guidance materials. These programs are keyed to furthering the establishment, growth and success of small businesses. It is estimated that managerial deficiencies cause nine out of ten business failures.

The SBA programs can identify management problems, develop solutions and help implement and expand business plans. In addition to its own professional management assistance officers, SBA relies heavily on national volunteer organizations such as SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives) to expand its capability for individual counseling. More

than 300 colleges and schools of business throughout the Nation also provide personalized counseling at no charge through SBA's Small Business Institute (SBI) Program.

An important addition to SBA's management assistance capabilities has been the Small Business Development Center (SBDC) Program. The SBDC program is a cooperative effort by universities, the Federal Government, State and local governments, and the private sector to provide specialized management and technical assistance to the small business community. Started on a pilot basis at one university in December 1976, the program has expanded in 1984 to 36 statewide operating SBDCs in 35 States and the District of Columbia. Additional centers are located throughout the States at colleges, universities, and local government offices, as well as in selected locations, such as downtown storefronts, easily accessible to small business clients.

SMALL BUSINESS INNOVATION RESEARCH

The Small Business Innovation Development Act of 1982, signed into law on July 22, 1982 provides for the establishment of Small Business Innovation Research (SBIR) programs in all Federal agencies with extramural research and development (R&D) budgets in excess of $100 million a year, and requires the establishment of annual goals for small business research awards in all agencies with R&D budgets in excess of $20 million a year. The funding level of SBIR programs is derived from fixed percentages of an agency's R&D budget.

Approximately $44.5 million was awarded to small firms in FY 1983, the first year of the SBIR program. During FY 1984, SBIR awards from eleven participating agencies amounted to $110 million. This amount is expected to increase to approximately $500 million when the program reaches full implementation in FY 1987.

The SBIR program is highly competitive and provides funds for the feasibility testing of innovative ideas with Phase I and Phase II funding levels of up to $50,000 and $500,000 respectively. A third phase encourages commercialization of innovations by utilizing private follow-on funding, or government contracts, when appropriate. Approximately 7,800 proposals were submitted in FY 1984. There were 958 Phase I awards and 373 Phase II awards. The Small Business Administration Office of Innovation, Research, and Technology monitors the implementation of this program at each participating agency, and coordinates the SBIR solicitation releases.

CHAPTER 3.—HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND SUBCOMMITTEES, 98TH CONGRESS

FULL COMMITTEE

February 3, 1983—Meeting on "Organizational Caucus" and Markup of H.R. 861 the SBA 8(a) Pilot Program and H.R. 1043, the Commerce Business Daily Act, ordered reported.

March 1, 1983—Hearing on "SBA 1984 Budget Request".

March 2, 1983—Meeting on "SBA 1984 Budget Request".

April 11, 1983—Meeting on "H.R. 2132/Job Creation". (Raleigh, North Carolina)

May 10, 1983—Markup of Committee Print (H.R. 3020) previously H.R. 403, H.R. 860, H.R. 863, H.R. 2132 and H.R. 2583), ordered reported.

July 21, 1983—Hearing on "Budget Reconciliation".

October 4, 1983—Monthly meeting and markup of H.R. 3075 and H.R. 4013, ordered reported.

November 3, 1983—Markup of H.R. 2133 and H.R. 4209 Small Business Procurement, ordered reported.

November 28, 1983—Hearing on "Financing, Procurement, and Other Problems of Small Business in Hawaii". (Honolulu, Hawaii)

February 7, 1984—Meeting on "Administrative Matters".

March 14, 1984—Meeting on "SBA 1985 Budget Request".

April 3, 1984—Hearing on "H.R. 5298, White House Conference on Small Business".

April 4, 1984—Hearing on "H.R. 5334, Small Business Development Centers".

April 4, 1984—Markup of H.R. 5298, White House Conference on Small Business and H.R. 5334, Small Business Development Centers, ordered reported.

April 12, 1984—Hearing on "H.R. 3832, Women's Business Ownership".

May 1, 1984—Markup of H.R. 3832, Women's Business Ownership, ordered reported.

June 11, 1984—Hearing on "Small Business Opportunities for Vietnam Era Veterans". (Boston, Massachusetts)

June 19, 1984—Markup of H.R. 4773, Secondary Market for SBA Guaranteed Loans, ordered reported.

July 26, 1984—Markup of H.R. 6013, SBA Program Amendments, ordered reported.

November 28, 1984—Hearing on "Minority Participation in SBA Development Company Program".

SUBCOMMITTEES

Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems

April 19, 1983—Hearing on "H.R. 863, SBA's Capital Ownership Development Program".

April 20, 1983—Hearing on "H.R. 863, SBA's Capital Ownership Development Program".

April 21, 1983—Hearing on "Pending Legislation".

April 27, 1983—Hearing on "Pending Legislation".

May 3, 1983—Hearing on "Pending Legislation".

May 4, 1983—Markup of H.R. 403, H.R. 620, H.R. 860, H.R. 863, H.R. 2132, and H.R. 2583, ordered reported.

May 17, 1983—Hearing on "SBA's Surety Bond Guarantee Program".

July 6, 1983—Hearing on "Small Business Development Center Program". (Seattle, Washington)

August 30, 1983—Hearing on "Small Business Development Center Program". (Atlanta, Georgia)

October 20, 1983—Hearing on "SBA Proposed Size Standards".

October 26, 1983—Hearing on "SBA Proposed Size Standards".

December 9, 1983—Hearing on "Small Business Development Center Program". (Columbia, South Carolina)

March 1, 1984—Hearing on "Effects of Current Economic Climate on Small Business".

April 5, 1984—Hearing on "Small Business Subcontracting Program".

April 10, 1984—Hearing on "Small Business Subcontracting Program".

April 25, 1984—Hearing on "Small Business Subcontracting Program".

June 21, 1984—Hearing on "Small Business Subcontracting Program".

June 28, 1984—Hearing on "Small Business Subcontracting Program".

September 19, 1984—Hearing on "Contract Provisions of P.L. 97-424".

Subcommittee on General Oversight and the Economy

May 17, 1983—Hearing on "Impact of Computers on the Workforce".

May 18, 1983—Hearing on "Impact of Computers on the Workforce".

May 19 and June 2, 1983—Hearings on "Building Trade With Africa." (Joint hearings with the Subcommittees on International Economic Policy and Trade, and on Africa, of the Committee on Foreign Affairs.)

June 28, 1983—Hearing on "Renewable Energy". (Joint hearing with the Energy and Commerce Committee and the Science and Technology Committee)

September 15, 1983—Hearing on "Effect of Revenue Rule 83-124 on Gasoline Marketing Practices".

October 5, 1983—Hearing on "H.R. 2133, Small Business Procurement".

October 6, 1983—Hearing on "H.R. 2133, Small Business Procurement".

October 12, 1983—Hearing on "Small Business Procurement". (Jamestown, North Carolina)

October 13, 1983—Hearing on "Railroads and Small Businesses". (Cooperstown, New York)

October 27, 1983—Markup of H.R. 2133 and H.R. 3784 Small Business Procurement, ordered reported.

January 14, 1984—Hearing on "Small Business and Crime". (Clearwater, Florida)

January 17, 1984—Hearing on "Prompt Payment Act". (Portsmouth, Virginia)

January 25, 1984—Hearing on "Abuses and Management of SBA Contracts".

April 11, 1984—Hearing on "Impact of Proposed Oil Mergers on Gasoline Market Place". (Joint hearing with the Energy, Environment, and Safety Issues Affecting Small Business Subcommittee)

June 27, 1984—Hearing on "SBA's Computer Systems".

July 9, 1983—Hearing on "Impact of Banking Deregulation on Small Business". (Littleton, Colorado)

September 20, 1984—Hearing on "Product Testing Approval Policies".

Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business

May 24, 1983—Hearing on "Impact of Deregulation on the Air Transportation Marketing System".

June 13, 1983—Hearing on "State of Rural Small Business". (Ulm, Minnesota)

July 14, 1983—Hearing on "H.R. 3075".

August 8, 1983—Hearing on "Impact of Federal Regulations on Small Business". (Marysville, California)

September 14, 1983—Hearing on "Vertical Price Fixing".

September 15, 1983—Markup of H.R. 3075, ordered reported.

March 23, 1984—Hearing on "Anticompetitive Impact of International Trade Practices on Small Businesses".

May 22, 1984—Hearing on "Competition Between Small Businesses and Public Utilities".

Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business

April 28, 1983—Hearing on "PIK Program and Its Effects on Agricultural Support Businesses."

June 3, 1983—Hearing on "Effects of Toxic Waste Landfill on Business/Residential Economy". (West Covina, California)

July 26, 1983—Hearing on "H.R. 2867—Hazardous Waste".

October 27, 1983—Hearing on "Small Business Innovation and Techonology as it Affects Hazardous Waste".

April 11, 1984—Hearing on "Impact of Proposed Oil Mergers on Gasoline Market Place". (Joint hearing with General Oversight and the Economy Subcommittee)

April 28, 1984—Hearing on "Impact of Proposed Oil Mergers on Gasoline Market Place". (Jefferson City, Missouri)

July 11, 1984—Hearing on "Small Business Issues in Rural America". (Abilene, Texas)

July 31, 1984—Hearing on "Hazardous Waste and Small Business—BKK Landfill Followup".

Subcommittee on Tax, Access to Equity Capital and Business Opportunities

April 14, 1983—Hearing on "Tax Export Incentives".

April 27, 1983—Hearing on "Employment and Investment Incentives for Small Business in Distressed Areas."

June 22, 1983—Hearing on "Incentives for Startups and Venture Capital".

September 28, 1984—Hearing on "The Operations of the Secondary Market Loans".

October 5, 1983—Hearing on "Inventory Accounting".

October 19, 1983—Hearing on "Bank Deregulations and the Impact on Small Business".

February 29, 1984—Hearing on "H.R. 4773, Secondary Market for SBA Guaranteed Loans".

March 21, 1984—Hearing on "Small Business and Export Tax Incentives".

June 6, 1984—Markup of H.R. 4773, Secondary Market for SBA Guaranteed Loans, ordered reported.

September 6, 1984—Hearing on "Current Trends in Financial Services Industry".

October 3, 1984—Hearing on "IRS Compliance Procedures".

Subcommittee on Export Opportunities and Special Small Business Problems

July 8, 1983—Hearing on "Exports and Small Business". (Portland, Oregon)

September 16, 1983—Hearing on "Export Promotion".

October 26, 1983—Hearing on "Export/Import Bank and Small Business".

November 15, 1983—Hearing on "Opinion Molder Policy".

March 7, 1984—Hearing on "H.R. 1157, Opinion Molder Policy".

July 10, 1984—Hearing on "Export Opportunities and Foreign Trade Zones." (Dallas, Texas)

98TH CONGRESS PUBLICATIONS—ALPHABETICAL INDEX

Building Trade With Africa: Joint hearings held (before the Subcommittees on International Economic Policy and Trade, and on Africa of the Committee on Foreign Affairs; and the Subcommittee on General Oversight and the Economy of the Small Business Committee) May 19 and June 2, 1983, Washington, D.C.

Commerce Business Daily: House Report No. 98-263 (June 23, 1983).

Competition Between Small Business and Public Utilities: Hearing held May 22, 1984, Washington, D.C.

Competition in Federal Procurement: Hearings held October 5 and 6, 1983, Washington, D.C.

Deregulation of Financial Institutions and Its Impact on Small Business Financing: Hearing held October 19, 1983, Washington, D.C.

Effects of Economic Policy on Small Business: Hearing held March 1, 1984, Washington, D.C.

8(a) Pilot Program Extension: House Report No. 98-2 (February 3, 1983).

Employment and Investment Incentives for Small Business in Distressed Areas: Hearing held April 27, 1983, Washington, D.C.

Export Promotion and Small Business: Hearings held July 8, 1983, Portland, Oregon; September 16, 1983, Dunedin, Florida; and October 26, 1983, Washington, D.C.

Hazardous Waste Control and Enforcement Act, H.R. 2867 (Part 1—Small Quantity Generators): Hearing held July 26, 1983, Washington, D.C.

Hazardous Waste Control and Enforcement Act, H.R. 2867 (Part 2—Innovative Technologies): Hearing held October 27, 1983, Washington, D.C.

Hazardous Waste Landfilling—Impact on Small Businesses: Hearing held June 3, 1983, West Covina, California.

H.R. 863, to Amend the Small Business Act: Hearings held April 19 and 20, 1983, Washington, D.C.

H.R. 4773, Legislation on the Secondary Market for SBA Guaranteed Loans: Hearing held February 29, 1984, Washington, D.C.

Impact of Deregulation on the Air Transportation Marketing System: Hearing held May 24, 1983, Washington, D.C.

Impact of International Trade Practices on Small Business: Hearing held March 23, 1984, Washington, D.C.

Impact of Robots and Computers on the Work Force of the 1980's: Hearings held May 17 and 18, 1983, Washington, D.C.

Incentive for Startups and Venture Capital: Hearing held June 22, 1983, Washington, D.C.

Inventory Accounting and Capital Formation: Hearing held October 5, 1983, Washington, D.C.

National Commission on Women's Business Ownership, H.R. 3832: Hearing held April 12, 1984, Washington, D.C.

Notice of Federal Contract Opportunities: House Report No. 98-3, (February 3, 1983).

Oil Company Mergers: Impact on Petroleum Retailers: Hearing held April 29, 1984, Jefferson City, Missouri.

Operations of the Secondary Market for SBA Guaranteed Loans: Hearing held April 28, 1983, Washington, D.C.

PIK Program and Its Effects on Agricultural Support Businesses: Hearing held April 28, 1983, Washington, D.C.

Problems Facing Small Business in Hawaii: November 29, 1983, Honolulu, Hawaii.

Renewable Energy Industry: Joint hearing (before the Subcommittees of the Committee on Energy and Commerce, the Committee on Small Business and the Committee on Education and Labor) held June 28, 1983, Washington, D.C.

SBA Authorization and Other Small Business Legislation: Hearings held April 11, Raleigh, N.C.; April 21, 27 and May 3, 1983, Washington, D.C.

SBA 1984 Budget Request: Hearing held March 1, 1983, Washington, D.C.

SBA's Opinion Molder Policy, and H.R. 1157: Hearings held November 15, 1983, and March 7, 1984, Washington, D.C.

SBA's Procurement Automated Source System Program: January 25, 1984, Washington, D.C.

Size Standards: Hearings held October 20 and 26, 1983, Washington, D.C.

Small Business Act Programs: House Report No. 98-914 (July 27, 1984).

Small Business Breakouts: House Report No. 98-914 (July 27, 1984).

Small Business Breakouts: House Report No. 98-528 (November 10, 1983).

Small Business Competition for Federal Procurements: House Report No. 98-541 (November 12, 1983).

Small Business Computer Crime Prevention Act: House Report No. 98-423, Part 1 (October 20, 1983).

Small Business Computer Crime Prevention Act, H.R. 3075: Hearing held July 14, 1983, Washington, D.C.

Small Business Development Center Improvement Act of 1984: House Report No. 98-739 (May 10, 1984).

Small Business Development Center Improvement Act of 1984: House Report No. 98-955 (August 6, 1984).

Small Business Development Center Program (Part 1): Joint hearing held (before the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Committee on Small Business of the House of Representatives, and the Committee on Small Business of the United States Senate) July 6, 1983, Seattle, Washington.

Small Business Development Center Program (Part 2): Hearings held August 30, 1983, Atlanta, Georgia, and December 9, 1983, Columbia, South Carolina.

Small Business Development Center Program (Part 3): Hearing held April 4, 1984, Washington, D.C.

Small Business Development Center Program Extension: House Report No. 98-406 (October 6, 1983).

Small Business Secondary Market Improvement Act of 1984: House Report No. 98-853 (June 21, 1984).

Small Business Subcontracting Program (Part 1): Hearing held April 5, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 2): Hearing held April 10, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 3): Hearing held April 25, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 4): Hearing held June 21, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 5): Hearing held September 24, 1984, Washington, D.C.

State, Local, and Private Sector Small Business Export Initiatives: House Report No. 98-1036 (September 18, 1984).

State of Small Business in Rural America, The: Hearing held June 13, 1983, New Ulm, Minnesota.

Surety Bond Guarantee Program: Hearing held May 17, 1983, Washington, D.C.

Tax Proposals to Foster Small Business Exports: Hearing held April 14, 1983, Washington, D.C.

Tax Proposals to Foster Small Business Exports: Hearing held March 21, 1984, Washington, D.C.

White House Conference on Small Business, H.R. 5298: Hearing held April 3, 1984, Washington, D.C.

White House Conference on Small Business: House Report No. 98-652 (April 5, 1984).

Windfall Profits Tax Collections and Independent Gasoline Marketers: Hearing held September 15, 1983, Washington, D.C.

Women's Small Business Ownership Act of 1984: House Report No. 98-750, Part 1 (May 15, 1984).

98TH CONGRESS PUBLICATIONS—TOPICAL INDEX

Computer Crime

Small Business Computer Crime Prevention Act, H.R. 3075: Hearing held July 14, 1983, Washington, D.C.

Small Business Computer Crime Prevention Act: House Report No. 98-423, Part 1 (October 20, 1983).

Deregulation

Deregulation of Financial Institutions and Its Impact on Small Business Financing: Hearing held October 19, 1983, Washington, D.C.

Impact of Deregulation on the Air Transportation, Marketing System: Hearing held May 24, 1983, Washington, D.C.

Energy

Renewable Energy Industry: Joint hearing (before the Subcommittee of the Committee on Energy and Commerce, the Committee on Small Business and the Committee on Education and Labor) held June 28, 1983, Washington, D.C.

Export and Trade

Building Trade With Africa: Joint hearings held (before the Subcommittees on International Economic Policy and Trade, and on Africa of the Committee on Foreign Affairs; and the Subcommittee on General Oversight and the Economy of the Small Business Committee) May 19 and June 2, 1983, Washington, D.C.

Export Promotion and Small Business: Hearings held July 8, 1983, Portland, Oregon; September 16, 1983, Dunedin, Florida; and October 26, 1983, Washington, D.C.

Impact of International Trade Practices on Small Business: Hearing held March 23, 1984, Washington, D.C.

State, Local, and Private Sector Small Business Export Initiatives: House Report No. 98-1036 (September 18, 1984).

Export Opportunities and Foreign Trade Zones: Hearing held on July 19, 1984, Dallas, Texas.

Hazardous Waste

Hazardous Waste Control and Enforcement Act, H.R. 2867 (Part 1—Small Quantity Generators): Hearing held July 26, 1983, Washington, D.C.

Hazardous Waste Control and Enforcement Act, H.R. 2867 (Part 2—Innovative Technologies): Hearing held October 27, 1983, Washington, D.C.

Hazardous Waste Landfilling—Impact on Small Businesses: Hearing held June 3, 1983, West Covina, California.

BKK Landfill in West Covina, California: Hearing held July 31, 1984, West Covina, California.

Mergers

Oil Company Mergers: Impact on Petroleum Retailers: Hearing held April 28, 1984, Jefferson City, Missouri.

PIK Program

PIK Program and Its Effects on Agricultural Support Businesses: Hearing held April 28, 1983, Washington, D.C.

Procurement

Commerce Business Daily: House Report No. 98-263 (June 23, 1983).

Competition in Federal Procurement: Hearings held October 5 and 6, 1983, Washington, D.C.

8(a) Pilot Program Extension: House Report No. 98-2 (February 3, 1983).

Notice of Federal Contract Opportunities: House Report No. 98-3 (February 3, 1983).

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Small Business Subcontracting Program (Part 2): Hearing held April 10, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 3): Hearing held April 25, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 4): Hearing held June 21, 1984, Washington, D.C.

Small Business Subcontracting Program (Part 5): Hearing held September 24, 1984, Washington, D.C.

Small Business Breakouts: House Report No. 98-528 (November 10, 1983).

Small Business Competition for Federal Procurements: House Report No. 98-541 (November 12, 1983).

SBA Programs and Authorizations

H.R. 863, to Amend the Small Business Act: Hearings held April 19 and 20, 1983, Washington, D.C.

H.R. 4773, Legislation on the Secondary Market for SBA Guaranteed Loans: Hearing held February 29, 1984, Washington, D.C.

Operations of Secondary Market for SBA Guaranteed Loans: Hearing held September 28, 1983, Washington, D.C.

SBA's Opinion Molder Policy, and H.R. 157: Hearings held November 15, 1983, and March 7, 1984, Washington, D.C.

SBA 1984 Budget Request: Hearing held March 1, 1983, Washington, D.C.

Small Business Act Programs: House Report No. 98-914 (July 27, 1984).

Small Business Authorizations and Amendments: House Report No. 98-182 (May 16, 1983).

SBA Authorization and Other Small Business Legislation: Hearings held April 11, Raleigh, N.C.; April 21, 27 and May 3, 1983, Washington, D.C.

Small Business Development Center Program Extension: House Report No. 98-406 (October 6, 1983).

Small Business Development Center Improvement Act of 1984: House Report No. 98-739 (May 10, 1984).

Small Business Development Center Improvement Act of 1984: House Report No. 98-955 (August 6, 1984).

Small Business Development Center Program (Part 1): Joint hearing held (before the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Committee on Small Business of the House of Representatives, and the Committee on Small Business of the United States Senate) July 6, 1983, Seattle, Washington.

Small Business Development Center Program (Part 2): Hearings held August 30, 1983, Atlanta, Georgia, and December 9, 1983, Columbia, South Carolina.

Small Business Development Center Program (Part 3): Hearing held April 4, 1984, Washington, D.C.

Small Business Secondary Market Improvement Act of 1984: House Report No. 98-853 (June 21, 1984).

Surety Bond Guarantee Program: Hearing held May 17, 1983, Washington, D.C.

Size Standards

Size Standards: Hearings held October 20 and 26, 1983, Washington, D.C.

Special Small Business Problems

Competition Between Small Business and Public Utilities: Hearing held May 22, 1984, Washington, D.C.

Effects of Economic Policy on Small Business: Hearing held March 1, 1984, Washington, D.C.

Impact of Robots and Computers on the Work Force of the 1980's: Hearings held May 17 and 18, 1983, Washington, D.C.

Problems Facing Small Business in Hawaii: November 28, 1983, Honolulu, Hawaii.

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Inventory Accounting and Capital Formation: Hearing held October 5, 1983, Washington, D.C.

Tax Proposals to Foster Small Business Exports: Hearing held April 14, 1983, Washington, D.C.

Tax Proposals to Foster Small Business Exports: Hearing held March 21, 1984, Washington, D.C.

Windfall Profits Tax Collections and Independent Gasoline Marketers: Hearing held September 15, 1983, Washington, D.C.

Venture Capital

Incentive for Startups and Venture Capital: Hearing held June 22, 1983, Washington, D.C.

White House Conference on Small Business

White House Conference on Small Business, H.R. 5298: Hearing held April 3, 1984, Washington, D.C.

White House Conference on Small Business: House Report No. 98-652 (April 5, 1984).

Women's Business Ownership

National Commission on Women's Business Ownership, H.R. 3832; Hearing held April 12, 1984, Washington, D.C.

Women's Small Business Ownership Act of 1984: House Report No. 98-750, Part 1 (May 15, 1984).

CHAPTER 4.—COMMITTEE LEGISLATION ENACTED

This chapter covers the procedure through which many of the Committee's initiatives became law during the 98th Congress. The format used provides the background and purpose of the legislative initiative and the Committee's action in reporting the legislation for consideration of the Full House. Subsequent action on the floor of the respective Houses and action by Conferees is included as appropriate.

SMALL BUSINESS PILOT PROCUREMENT PROGRAMS EXTENSION (H.R. 861) PUBLIC LAW 98-47

The Committee reported H.R. 861 with amendments on February 3, 1983 (House Report 98-2) a bill to extend through September 30, 1985 the SBA's 8(a) Pilot and Surety Bond Pilot Programs.

INTRODUCTION AND BACKGROUND

H.R. 861 was introduced by Chairman Mitchell on January 25, 1983. The measure was ordered favorably reported at a full Committee meeting held on February 3, 1983.

The House passed the measure under suspension of the Rules on February 15, 1983. Subsequently, the text of the newly passed H.R. 861 was added as an amendment to the Senate bill, S. 273, which was then pending action by the House.

A conference committee convened on S. 273 and the conference report on the bill was agreed to by the Senate on June 27, 1983 and by the House on June 30, 1983. The President signed the bill on July 13, 1983 and S. 273 became P.L. 98-47.

THE NEED FOR THE LEGISLATION

8(a) procurement pilot program

Public Law 95-507, signed into law on October 24, 1978, established the 8(a) procurement pilot program and the surety bond waiver pilot program. Both pilot programs are intended to facilitate the ability of SBA to develop 8(a) firms so that they may achieve competitive viability in the economic mainstream.

The procurement pilot program grants SBA the unilateral authority to select from an agency, designated by the President, any contract requirement for use in the 8(a) program. The statutory objective of this program is to assist the growth and development of 8(a) firms by increasing the quality and quantity of contract requirements available to support 8(a) firms.

The methods used to secure requirements for the 8(a) pilot program differ from those used for the identification of requirements under the regular 8(a) program. Ordinarily, a Federal agency volunteers a requirement for use in the 8(a) program or SBA may re-

quest a particular requirement from a buying activity. However, if there is some disagreement between SBA and the buying activity over the inclusion of a requirement in the 8(a) program, the final decision lies with the head of the buying agency. Under the procurement pilot program, the head of the buying agency has the authority to set the terms and conditions of a requirement, however, SBA has the final decision making authority regarding the selection of a particular requirement for use in the pilot program.

On January 10, 1979, the President designated the Department of the Army as the first agency to participate in the pilot program. It was not until May 24, 1979 when SBA and DOA formalized an interagency agreement. Four months later, in September 1979, SBA issued guidelines to the field offices. It was not until February 1980 that SBA central officials met with SBA regional offices and procurement center representatives to discuss implementation of the program.

A GAO report dated January 23, 1981 discussed the effectiveness of the first pilot program. The report raised a number of concerns but cited three substantive areas which needed to be addressed by SBA to prevent a recurrence of similar events during future pilot programs. The problem areas raised by GAO were:

(1) The inability of SBA to properly match firms with procurement requirements due to lack of sufficient information about the 8(a) firm's capabilities.

(2) SBA's failure to assess the 8(a) firms' capability to perform prior to contract award.

(3) Ineffective use of the PCR's in identifying pilot projects.

The GAO concluded that the first pilot program was ineffective primarily due to the lack of proper implementation by SBA.

A report prepared by this Committee (H. Rept. No. 97-304, October 28, 1981) attributed the dismal performance of the pilot program to the constant disagreement between the SBA and the Army about the type of contracts to be selected for inclusion in the pilot program.

As a result of poor implementation of the pilot program, only nine contracts totalling $35 million were awarded during the first pilot period of 1979-1980.

The surety bond waiver pilot program authorizes SBA to waive all Federal bonding requirements for 8(a) contractors who are start-ups and in the program for one year or less, provided that the following conditions are met:

(1) The firm cannot secure the requisite bond needed for the job with or without an SBA guarantee of the bond;

(2) SBA will take such steps as may be appropriate to protect suppliers and laborers of the 8(a) firm; and

(3) SBA determines that the firm has the potential of becoming bondable if assisted for a limited period of time by the bond waiver.

The intent of this pilot is to assist 8(a) start up firms that have historically had difficulties in obtaining bonding for contracts that they are otherwise capable of performing.

During the initial period of the bond waiver pilot program, SBA failed to either issue regulations or standard operating procedures

to implement this program. Thus, no surety bonds were waived for any 8(a) contractor during this initial period.

Because of SBA's poor management of the 8(a) pilot programs, P.L. 96-481 was enacted on October 20, 1980 to, among other things, extend both pilot programs through September 30, 1981.

The second procurement pilot program resulted in the award of five contracts by the Army for a total of $60.7 million. Although the aggregate dollar amount of the contracts awarded under the second pilot increased from 1980 levels, the number of contract actions decreased significantly. However, it was reported to your Committee that SBA had selected additional contracts for inclusion in the pilot; but, for various reasons, the proposed contracts were withdrawn from the program.

There is clearly a need for SBA to effectively use their unilateral authority under the pilot program to increase both the aggregate dollar amount of the contracts selected for use in the program as well as the quantity of requirements currently in the 8(a) program. To date, this objective has not yet been achieved, indeed, the concept has not yet been fairly tested.

It should also be noted that despite the fact that the surety bond waiver pilot program has been statutorily authorized for five years, SBA has not, to date, waived a single surety bond for any 8(a) contractor. Further, SBA has still not issued any operating procedures for implementation of this program.

WHAT THE LAW WILL DO

P.L. 98-47 extends for an additional two years (until September 30, 1985) the 8(a) procurement pilot program and the surety bond waiver pilot program. The law requires that the President designate a pilot agency, other than the Department of Defense, within 60 days after date of enactment.

On September 30, 1983 the President selected the Department of Transportation as the pilot agency. On November 3, 1983, DOT and SBA entered into an interagency agreement formalizing the terms and conditions for implementation of the program. SBA guidelines and operating procedures for the program became effective on January 1, 1984. In the operating procedures SBA stated that its objectives for the pilot program were to:

(1) Secure additional procurement opportunities for eligible 8(a) firms.

(2) Secure procurement opportunities not currently offered by DOT to the 8(a) program.

(3) Secure unique procurement opportunities that will contribute to the growth and development of 8(a) firms.

(4) Upgrade the quality of procurement opportunities available to participants in the 8(a) program.

These stated objectives are generally consistent with the Congressional intent of the program.

CONCLUSION

This Committee is concerned that implementation of the pilot program has proceeded slowly since the extension of the program was enacted in July 1983. More than one year of this two year pilot

program has expired and yet only three "letter" contracts have been issued for a total dollar value of only $5.56 million, and only one contract for $3.5 million has actually been awarded under the program. Furthermore, there are complaints about unnecessary delays, and lack of assistance in program certification. Moreover, there have been indications that requirements have been identified and requested for the pilot program and subsequently withdrawn because of the failure to conduct a thorough assessment of the need for the requirement. These problems indicate that the program is perhaps not being as effectively managed as it should be. Therefore, the Committee intends to aggressively monitor the implementation of this program to ensure that SBA fulfills the statutory objective of this program.

The Committee is gravely concerned that SBA has taken no substantive action towards implementing the surety bond waiver pilot program. It is imperative that SBA comply with the law and give this pilot a fair test.

COMMERCE BUSINESS DAILY AMENDMENTS (H.R. 1043) PUBLIC LAW 98-72

The Committee's extensive changes in the statutes governing procurement actions by Federal departments and agencies during the 98th Congress began with an amendment to section 8(e) of the Small Business Act (15 USC 637), H.R. 1043. The purpose of the amendment is to provide small business with adequate notice of Federal contracting opportunities as published in the Commerce Business Daily. The Committee reported H.R. 1043, February 3, 1983, House Report 98-3, excerpts of which are as follows.

INTRODUCTION AND BACKGROUND

This Committee is charged with the responsibility to carry forward a policy embodied in the Small Business Act of 1953:

> to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprise * * *.

However, the small business share of Federal contracts continues to be inadequate. Total Federal contract dollars awarded to small business over the last ten years have grown at only a 1 percent average annual rate, and last year actually decreased.

Congress has always insisted on small business participation in Government procurement because it improves and broadens the competitive base and the defense industrial base; provides innovative technology; lowers procurement costs; performs a vital role in industrial mobilization; and disperses procurement funds industrially and geographically.

Therefore, the Chairman introduced H.R. 1043, legislation which will improve the small business community's access to Federal procurement information and increase contracting opportunities.

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Need for the Legislation

Section 8(e) of the Small Business Act requires that Federal contracting opportunities be published in the Commerce Business Daily. This supposedly insures maximum competition for Government contracts. The reality, however, is that small firms do not have sufficient time to prepare bids and participate in Government procurement. Improved contracting opportunities for small concerns will lead to greater competition and lower prices for the Government.

It is administrative practice to publish procurement notices in the Commerce Business Daily ten days before the issuance of a solicitation, but the practice is not constant, and a notice often first appears on the date a solicitation is issued. In addition, regulations presently provide for a minimum bidding time of twenty calendar days except where "special circumstances" call for a shortened time period. Therefore, instead of a cumulative period of thirty days for solicitation and bid, sometimes there is only an arbitrarily imposed timeframe which exists solely at the procuring agency's discretion. The small firm is at a clear disadvantage since it often lacks the financial and human resources necessary to monitor this discretionary, fluctuating process.

The Committee decided it was necessary to amend the Small Business Act to require a procuring agency to give small businesses fifteen days from the appearance of a notice in the Commerce Business Daily to request copies of a solicitation. An additional thirty days from the issuance of the solicitation would be offered before bids are due. These forty-five days would afford small firms the time to monitor the publication and prepare a bid or proposal. Without creating additional costs for the Commerce Business Daily, this will aid small firms in developing their capacity to do business with the Federal Government and will begin the process of simplification of contracting procedures.

What the Bill Would Do

H.R. 1043 would amend the Commerce Business Daily provisions presently in section 8(e) of the Small Business Act to establish minimum notice requirements for Federal procurements advertised in the Commerce Business Daily: fifteen days between publication of the notice and issuance of the request for bids or proposals and an additional thirty days between such issuance and awarding of the contract.

Conclusion

Your Committee believes that this bill will enable small businesses to bid on more Federal contracts by giving them more ample time to learn of contracting opportunities and to prepare and submit their bids. Since these Federal contracts are awarded to the lowest bidder, encouraging more competition from the small business sector will benefit not only small business but also the Federal Government.

Subsequent Action

The House passed H.R. 1043 on February 15, 1983, the Senate having passed its version S. 272 on February 3, 1983. The House asked for a conference on March 8, 1983, after having amended S. 272 to include the provisions of H.R. 1043. The Senate agreed to a conference on March 11, 1983. The Conference Report (H. Rpt. 98-262) was finally agreed to on August 1, 1983.

After the conference report had been filed and after the Senate had approved the conference report, the Department of Defense expressed for the first time concerns over some of the provisions of the conference report. Therefore, Conferees adopted minor changes to preclude the possibility of erroneous interpretations and unintended results. On conference reports, the procedure to accomplish such changes was for the House and Senate to adopt a resolution for the Secretary of the Senate to make changes.

The conference report, as modified by the Senate resolution changed the legislation to do the following:

First, Federal departments and agencies would be required to provide public notice of upcoming Federal contracts of $10,000 or more in the Commerce Business Daily. They would be required to allow the lapse of at least 15 days between the publication of notice and the issuance of a contract solicitation—30 days for R&D solicitations—and then to allow at least an additional 30 days for receipt of bids or proposals. There would be exemptions for those procurements: (1) which for security reasons are of a classified nature; (2) which are for goods or services for which the Department has an unusual and compelling urgency; (3) in which a foreign government is reimbursing the United States for the cost of the procurement and only one source is available or if the terms of an international agreement or treaty authorize or require that the procurement be from specified sources; (4) which are made from another Government department or a mandatory source of supply; (5) which are for utility services if only one source is available; (6) which are made against an order placed under a requirements contract; (7) which are for research resulting from unsolicited proposals which are unique if publication would disclose originality of thought or innovativeness; and (8) for which SBA and the Department agree that advance notice is not appropriate or reasonable.

Second, it would impose a prohibition against Federal departments commencing negotiations for a sole source contract (except under the 8(a) and Small Business Innovation Research programs and in emergency situations) above a threshold amount unless the head of the procuring activity or his deputy has approved the authority to enter into such contract and the responses to the notice of procurement action. There would be a 3-year phase in of the dollar threshold amount of procurement contracts to which these provisions will apply: $1 million in fiscal year 1984, $500,000 in fiscal year 1985 and $300,000 in fiscal year 1986 and each year thereafter.

Third, it also would require that in all procurement actions in excess of $25,000 in which the award of subcontracts is likely, the Federal department entering the contract must submit for publica-

tion in the Commerce Business Daily a notice announcing the award of the prime contract.

Fourth, and last, the provisions of the conference report would be applicable to procurement actions initiated 90 days after the date of enactment except the restriction on sole source contracts which would be effective October 1, 1983. The President signed this legislation into law on August 11, 1983.

The Competition in Contracting Act (P.L. 98-369) made significant changes in Commerce Business Daily publication procedures. The Small Business and Federal Procurement Competition Enhancement Act of 1984 (P.L. 98-577) further amended the law governing Commerce Business Daily publication of notice provisions: P.L. 98-577 reconciled provisions of the Competition in Contracting Act with provisions of Section 8(e) of the Small Business Act as amended by P.L. 98-72.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS AUTHORIZATION ACT (H.R. 5298) PUBLIC LAW 98-276

The Committee reported H.R. 5298, with amendments, to the House of Representatives on April 5, 1984, House Report 98-652, excerpts of which are as follows:

The Purpose of the Bill

The Congress authorizes the President, under guidelines established by this legislation, to conduct prefatory State and regional conferences in each State culminating in a National White House Conference on Small Business during the period January 1, 1985, through September 1, 1986. Small business delegates to the National Conference would be selected by attendees at State and regional conferences and also by appointment by the President, Members of Congress, and State government officials. This would enable small business to develop and communicate a consensus of its ideas on Federal Government policy and needed legislation or regulatory reform and also to followup on the recommendations of the 1980 White House Conference on Small Business.

Introduction and Background

Chairman Mitchell and the ranking minority member, Mr. McDade, jointly sponsored H.R. 5298, along with more than 50 cosponsors, a bill to establish a followup White House Conference on Small Business.

The full Committee held hearings on H.R. 5298 on April 3, 1984, in Washington, D.C., where the legislation was unanimously endorsed. The committee ordered the bill reported, with amendments, by a unanimous vote of those members present at a committee meeting held on April 4, 1984.

The background for congressional support for a White House Conference on Small Business goes back at least as far as the 95th Congress which saw the introduction of statutory provisions establishing a White House Conference on Small Business, H.R. 11445. Both Houses overwhelmingly adopted this legislation but it failed to become law.

In the 96th Congress, both Houses adopted similar statutory language in H.R. 90 and S. 918. However, this legislation was also delayed through Conference and the President, by Executive Order 12061, established the Commission which provided for the 1980 Conference.

In 1978 and 1979 President Carter instituted a series of State and regional meetings which culminated in a National White House Conference on Small Business in Washington, D.C., in 1980.

Open forums and regional conferences held in every State generated initial ideas and recommendations for the 1980 Conference. Task forces composed of small business owners with special expertise in given issue areas developed preliminary proposals for delegates to consider.

Following distribution of preliminary option papers to delegates in September 1979, 10 regional caucuses were held during the fall. At these meetings delegates added, amended, and deleted options, and collectively developed the issue agenda for the National Conference.

During four days in January 1980, 1,700 delegates debated issues and options in the 12 topic areas. Through a democratic ballot, delegates selected five options from each area they felt would best strengthen small business during the coming decade.

The 60 recommendations of the White House Conference on Small Business were the product of a year-and-a-half effort that involved more than 25,000 small business owners. These 60 recommendations were presented in the final report of the White House Commission on Small Business.

The delegates to this Conference formed an association, Small Business United (SBU), to followup on small business issues. SBU and other small business associations and representatives have been unanimous in their request that the committee authorize the President to conduct another conference. H.R. 5298 accomplishes this. Under the provisions of this bill, the President would institute a series of State and regional meetings and a National Conference between January 1, 1985, and September 1, 1986.

As introduced by the chairman, H.R. 5298 establishes as the purpose of the Conference: To increase public awareness of the essential contribution of small business; to identify the problems of small business, especially those of minorities and women as small business owners; to assist small business in carrying out its role as the Nation's job creator; to develop recommendations for executive and legislative action demanded by small business; and to review the status of recommendations adopted at the 1980 White House Conference on Small Business.

Need for the Legislation

The Committee believes that continuing efforts to establish a national, broad based agenda and policy on behalf of small business in America are necessary. Using the definition of small business agreed upon by the 1980 White House Conference on Small Business (that of businesses employing 500 employees or less) the basis for this concern becomes evident: Approximately 15 million businesses, or 99 percent, of the total number of businesses fall into

this category; small business produces about half of the private sector's output of goods and services; small businesses provide about one-half of all jobs; small businesses and independent inventors contributed from 40 to 100 percent of major innovations in industries ranging from food processing to aluminum and steel production; there were approximately 560,000 minority owned businesses in the United States in 1977 according to the most recent Bureau of the Census survey; in 1977, there were approximately 702,000 women owned businesses according to the Bureau of the Census.

Prior to the 1980 White House Conference on Small Business, Government efforts and "task force approaches" proved inadequate and undercapitalized. Congress decided a major effort was called for to increase public awareness of the essential contribution of small business; to identify the problems of small business, including new, small, and family enterprises; to examine the status of minorities and women as small business owners; and to develop specific and comprehensive recommendations for executive and legislative action as might be necessary.

The 1980 White House Conference on Small Business was national in scope: 25,000 persons participated in 57 meetings in every State. During these meetings, participants elected more than 1,200 representatives to continue the process; additional delegates were appointed by Governors, Members of Congress, and the President.

Recommendations were considered in 12 areas of special concern to small business: Capital formation and retention; minority business development; innovation and technology; inflation; veterans in business; Federal procurement; energy; women in business; government regulations and paperwork; economic policy and government programs; international trade; and education, training, and assistance.

Fifteen recommendations were given top-priority status. Eleven of the 15 called for changes involving taxation, inflation, or regulation.

Small business measures adopted since the Conference, and directly attributable to its impetus, include: The Regulatory Flexibility Act, the Innovation Development Act, the Equal Access to Justice Act, the Prompt Payment Act, and the Economic Recovery Tax Act, and numerous procurement initiatives given high priority by the delegates: e.g., increasing small concerns opportunity to bid on Federal procurement through decreased sole source contracting and longer lead time on publication of opportunities in the Commerce Business Daily. Public Law 98-72; and lessening of the Federal Government practice of retainage.

Congress recognized the Conference as a continuing implementation process that would require continuing hard work by even more people in the years ahead. At the time of the Conference, delegates also recognized this and pledged to return in 2 years to evaluate progress—both the Government's and their own—in achieving the objectives of its 60 recommendations. Resolution 11 of the Conference established the framework for delegate involvement in the continuing process of implementation.

Because of the many recommendations requiring legislation, the Small Business National Unity Council, the delegate followup group, worked with congressional delegations by providing Mem-

bers of Congress and their staffs with information and advice on the recommendations. It is to fulfill that promise to reconvene and followup on the delegates' recommendations that the second Conference be called.

The Chief Counsel for Advocacy served as counsel to the 1980 Conference. Resolution 11 called on him to continue to serve and to provide whatever assistance the Office of Advocacy could. The Committee continues to believe the Chief Counsel should play a large part in the process as an active participant. Advocacy can provide the continuity to make the Conference—the event, the results, and the continuing process—an important and useful tool to enhance and strengthen small business in the United States.

Implementation of Conference recommendations is a formidable task. It requires cooperation among the small business community and the executive and legislative branches of the Federal Government. Within the mandate of the Office, the Chief Counsel must support this continuing process.

The Committee expects that the preliminary conferences will be conducted along the lines of the 1980 Conference. Indeed, H.R. 5298 is a codification of the procedure used in conducting the 1980 White House Conference.

What the Bill Would Do

By terms of this act, Congress calls upon the President to conduct a National White House Conference on Small Business to be held between January 1, 1985, and September 1, 1986, after conducting State or regional conferences in each State. The President would appoint an executive director and personnel to direct the planning and administration of the Conference. Each Department and Agency of the Federal Government would provide such cooperation and assistance, including the assignment of personnel, as might be necessary.

SBA assistance could be made to public agencies and private organizations for purposes of conducting conferences within the States. However, funds expended by SBA under the act would have to be provided by Congress in advance.

The Conference would submit a report with recommendations to the President and to Congress no later than 6 months following the convening of the final conference. The report would include recommendations with special attention to the status of minorities and women as business owners and the status of the 1980 Conference recommendations. SBA would report annually for 3 years as to the status of the recommendations as a followup measure.

Conference directors and personnel would receive compensation and travel expenses while they are engaged in their duties with the White House Conference. Those also employed by the Federal Government in other capacities would receive per diem and reimbursement for their travel expenses but not additional compensation. SBA's Chief Counsel for Advocacy would provide extensive support for the Conferences.

The cooperation and assistance of appropriate Federal agencies, including the assignment of personnel, would be available to the Conference. The Committee anticipates that the actual operation of

the White House Conference will be directed by staff hired for that purpose and parallel the operations of the 1980 Conference. The Chief Counsel for Advocacy is again expected to play a large role in providing technical assistance and preparing materials for use by conference participants.

The Committee continues to believe that there should be the broadest possible participation in the White House Conference at State and regional levels. It should provide the opportunity for concerned individuals and organizations to discuss issues and problems confronting small business at State and Federal levels, and to develop solutions to those issues. The bill mandates, prior to the National Conference, a conference in each State which shall be open to all representatives of small business concerns. The selection process for delegates to the National Conference calls for a mix, primarily of those elected by participating small businesses, and also those appointed by Government officials, the President and Members of Congress. All nonelected delegates must be from small businesses.

The bill provides as a funding authorization for conducting the White House Conference "such sums as may be necessary." The Committee anticipates that the cost of carrying out the White House Conference on Small Business will be approximately $5 million, slightly more than the cost of the 1980 Conference. Each participant in the conferences must be responsible for his or her expenses. Any funds not expended would revert to the U.S. Treasury.

Conclusion

This bill is the result of extensive experience of this Committee with the benefits of the first White House Conference in 1980. It has unanimous small business support and was unanimously ordered favorably reported to the House by the members of the Committee.

Your Committee believes that the forum provided by a second White House Conference is needed by the Nation's small businesses if a climate is to be provided in which they may prosper; and especially to reverse recent trends which show that record numbers of small concerns cease doing business each year.

Your Committee believes that this bill represents a reasonable and inexpensive means of helping all small businesses throughout the Nation; and that preservation of a viable small business community must be a top priority of the Congress.

Subsequent Action

On April 9, 1984, H.R. 5298 passed the House under suspension of the Rules; the bill passed the Senate on April 11, 1984. The President approved the legislation on May 8, 1984.

SMALL BUSINESS SECONDARY MARKET IMPROVEMENT ACT OF 1984 (H.R. 4773) PUBLIC LAW 98-352

The Committee reported H.R. 4773, a bill to amend the Small Business Act to assist in the creation of a secondary market for the Government guaranteed portion of an SBA loan, with amend-

ments, on June 21, 1984, House Report 98-853, excerpts of which are as follows.

Purpose of the Bill

This legislation, H.R. 4773, is intended to provide specific statutory authority for a Small Business Administration program for the sale of the Government guaranteed portions of SBA 7(a) business loans to investors through a Secondary Market Program, and to expand that concept to sales of trust certificates representing interests in large pools of such loans.

The bill, H.R. 4773, would continue, and improve, the present Secondary Market Program, which has been operating successfully for several years on an administrative basis but which has not reached its full potential to assist small business. Moreover, it would establish by statute a new, expanded Secondary Market Program: the bill authorizes sale of the guaranteed portion of SBA 7(a) loans by lenders or holders to broker/dealers and others for the purpose of subsequent pooling and sale to investors of Government guaranteed trust certificates representing all or part of an interest in the pool. These trust certificates would carry the necessary Government guarantee of timely payment of principal and interest needed to attract increased numbers of investors. Pooling would provide increased liquidity to lenders.

The legislation would accomplish dual goals of enlarging the supply of funds made available to the small business community and reducing the cost of those funds. It also would provide a method for using the secondary market to increase availability of fixed rate financings which so many small concerns see as vital to their survival in this economy.

Introduction and Background

Representative Henry J. Nowak on February 7, 1984, introduced H.R. 4773, a bill to amend the Small Business Act to assist in the creation of a secondary market for the portions of loans guaranteed by the Small Business Administration. There are currently 43 cosponsors. The bill was referred to this Committee's Subcommittee on Tax, Access to Equity Capital and Business Opportunities.

As part of its study of the capital formation process, the Subcommittee held an investigatory hearing on SBA secondary market activities on September 28, 1983. Acting on that investigation, Mr. Nowak introduced H.R. 4773 with the objective of facilitating an expanded secondary market for SBA guaranteed loans and providing more capital to small business borrowers. The Subcommittee held hearings on H.R. 4773 on February 29, 1984.

Testimony was received at these two hearings from SBA Administrator James C. Sanders, banking executives, securities and investment specialists and other interested parties. Throughout its investigation and hearings on increasing access to capital for small concerns, the Subcommittee received and carefully analyzed numerous reports, data and other investigative materials supplied by public and private sector sources.

At its mark up session of June 7, 1984, the Subcommittee ordered the bill reported, as amended, by a unanimous vote of those

Members present. On June 19, 1984, the full Committee marked up H.R. 4773, and an amendment in the nature of a substitute was ordered reported by the full Committee by a unanimous vote of those Members present.

Need for the Legislation

Because small business is the Nation's leader in job creation, productivity, and innovation and research, it deserves, and must have access to, debt capital at reasonable rates. Small and minority concerns and entrepreneurs are at a disadvantage in obtaining conventional financing, especially in times of record high interest rates. Recently, wide-spread attention to this problem has generated recommendations for assistance from both the Legislative and Executive Branches.

In 1982, the Small Business Administration appointed a task force known as the Small Business Committee on Capital Access, which had the responsibility of making recommendations to increase the small business community's access to capital markets and to reduce its borrowing costs. To make SBA's 7(a) business loan guarantee program more effective, that Committee recommended encouraging development of the secondary market for sale of guaranteed portions of pooled SBA loans to attract greater participation from major financial institutions. The Committee believed that this increased involvement in the purchase of these loans and resulting competition among lenders to make 7(a) guaranteed loans for resale in the secondary market would both increase the loan funds made available to small businesses and lower the cost of those funds to the borrower.

In 1983, the General Accounting Office (GAO) issued a report to Congress entitled "SBA's 7(a) Loan Guarantee Program: An Assessment of its Role in the Financial Market", in which GAO concluded not only that the SBA 7(a) guaranteed loan program helps lenders fill a critical credit gap for small businesses needing long term financing but also that the current SBA secondary market program for these loans has advantages for both lenders and small businesses. The GAO found that it helps lenders with liquidity problems to make loans to small businesses that otherwise would not be made; and it enables lenders to leverage capital and make more small business loans than otherwise would be possible.

GAO endorsed the potential benefit of the secondary market program to small businesses:

> Lenders are able to obtain funds from investors such as insurance companies, pension funds, and money market funds which traditionally do not invest directly in small business. For some small banks, being able to gain access to these pools of managed capital is the difference between being able or unable to make an SBA-guaranteed loan. The secondary market process also has a leveraging effect, allowing lenders to reinvest the proceeds from sales in other small businesses. Lastly, the secondary market is used by some lenders to offer borrowers (1) the stability of fixed rate instead of variable rate loans and (2) lower interest rates.

As part of its recommendations to SBA to improve the effectiveness of the secondary market program, GAO specifically recommended that SBA develop a strategy for using the secondary market to offer small businesses the option of fixed rate financing, and that part of this strategy should address the desirability of actions such as the use of loan pooling.

In order for the financial programs presently administered by SBA to supply the needed financing to small business concerns, a broad base of financial institutions and investors must be induced into the process of financing small concerns.

At the present time, the great majority of SBA financing for small business is being accomplished in conjunction with the commercial banking system through the 7(a) guaranteed loan program. There are occasional shortages of loan funds due to periodically restrictive monetary policy or excessive demand for funds from all sectors. Partially through evolution and partially as the result of development by SBA and private sector participants, a system has been established whereby lenders, mostly banks, sell the SBA guaranteed portions of small business loans through a secondary market to private investors. This process generates new funds for small business, and permits banks to recycle funds to be made available for additional small business lending. Currently this system accounts for the availability of about $600 million for small business lending annually.

Your Committee believes that this system needs to be bolstered if it is to continue to be successful. There is a need not only to broaden the base of secondary market investors in small business loans, but also to increase the base of small business lenders and servicers who participate in the secondary market so that the delivery system contains competitive factors which insure efficiency. The present secondary market system was developed without explicit statutory authority to develop or maintain a secondary market in SBA guaranteed loans.

The Committee is convinced that legislation to provide that specific authority and also to authorize SBA to establish a new pooling arrangement and to issue certificates for sale to investors which would represent the guaranteed portions of 7(a) loans is necessary. Such certificates, to be marketable, must be fully guaranteed (by the United States) as to the timely payment to the purchasers of both principal and interest.

THE PRESENT SBA SECONDARY MARKET PROGRAM

The Small Business Administration, since its inception in 1953, has issued loan guarantees to induce lending institutions to finance small businesses. Each guaranty may cover no more than 90 percent or $500,000 of a qualified small business borrower's obligation.

SBA's Secondary Market Program, launched in 1973, enables lenders to sell the guaranteed portions of the loans they make. By selling the guaranteed portion, the lender immediately recoups most of it disbursement and can also increase the yield on the unguaranteed portion by charging the purchaser a continuing fee for servicing the entire loan.

SBA guaranteed portions, or "GP's", stand up favorably against other intermediate-term investments. Backed by the full faith and credit of the U.S. Government, the average fixed-rate SBA GP has a term of seven to ten years.

Although SBA loan sales have grown from $60 million in 1973 to over $600 million, many cash-rich institutional investors have been reluctant to invest in SBA GP's, citing the time-consuming sales procedures, the confusing ownership documentation and the unpredictable collection of payments.

SBA has acted to remedy these difficulties by appointing a Fiscal and Transfer Agent (FTA) to make it simpler for investors to manage a large portfolio of SBA GP's and for lenders to service the GP's they sell.

The main features of the present fiscal and transfer agency arrangement are:

(1) a Guaranteed Interest Certificate as evidence of ownership of the entire guaranteed portion of an SBA 7(a) loan. Under this system only individual loans are bought and sold;

(2) a central fiscal agency paying system. Lenders using the FTA make payments on all their SBA loans with a single check to the FTA and registered holders of certificates receive payments on all their certificates in a single check from the FTA; and

(3) a central transfer agency and registry. Following certificate issuance, the FTA facilitates the orderly flow of funds from the lender-servicer in the program to the registered holder of each certificate.

The lender-servicer charges an ongoing servicing fee which is deducted from each payment. This fee is negotiated by the lender-servicer and the dealer when each loan is brought to market. The lender-servicer must pay the SBA an up-front guaranty fee equal to 1% of the guaranteed principal.

However, under the present system SBA does not guarantee "timely payment" of principal and interest. If a borrower's payment is uncollected by the FTA, the agency is not required to pay the investor, although under the current practice the FTA does, on an interim basis, pay the investor anyway. When a loan is past due for 60 days or more, the FTA initiates default proceedings to recover principal and accrued interest from the lender-servicer or SBA. The FTA will notify the registered holder of this pending action. At any time during the term of the certificate it may be called for redemption due to normal or accelerated repayment, prepayment in full, or default.

This secondary market program for individual sales has proved useful and should be retained. However, it is not equal to the task of facilitating increased participation of lenders to small business providing increased liquidity to attract investors. There is ample evidence that more needs to be done to provide capital to small concerns. For instance, there is a continuing problem that SBA does not utilize all of its guarantee authority. Figures for recent years show:

[In billions of dollars]

	Congressional appropriation	Annual [illegible] guarantee utilization
Fiscal year:		
1981	3.7	2.84
1982	2.6	1.5
1983	2.5	2.0
1984	2.6	[1] 2.1

[1] Estimated.

The administration's future budget recommendations for SBA guaranteed loan commitments are declining for each of the next 5 years in contravention of Congress' expressed convictions. By improving the SBA secondary market operations, the Committee hopes to make the guaranteed loan program more attractive to banks and reaffirm Congressional support for loan levels at least as high as current authorizations in the Small Business Act.

By offering larger units in the secondary market, in contrast to the current method whereby the guaranteed portion of an individual loan is sold to the investor, SBA could induce major financial institutions to become more active in originating and purchasing SBA guaranteed loans. Ultimate costs borne by small business borrowers are expected to decrease. The availability of fixed-rate financing would increase. Secondary market demand increases could yield lower rate-of-return requirements from investors.

The objective of packaging SBA loans into homogeneous pools is to enhance their liquidity in the secondary market and thereby attract ready monies for the Nation's small business at the lowest possible cost. To date, institutional investors have been unwilling to commit substantial funds to SBA guaranteed loans due to the lack of uniformity among these loans, the comparatively small size of such loans (the average SBA guaranteed loan is significantly below $200,000) and the relative illiquidity of the secondary market. Pooling provides a mechanism for creating homogeneous securities which would have greater appeal in the national capital markets among institutional investors. Access to institutional investors would result in significantly lower borrowing costs.

To reduce the cost of financing SBA guaranteed loans, a financial vehicle must be created which is negotiable. Pooling has been successfully used in the housing markets for Government guaranteed mortgage pools of Government insured mortgages and mortgage pools of conventional uninsured mortgages. A similarly successful program is needed for small business financing.

Investment bankers believe SBA would obtain similar success if it were to pool its loans and issue securities representing fractional undivided interests in such pools. By creating a liquid security, which would appeal to institutional investors, it is anticipated that small businesses would be able to obtain funds at fixed interest rates and at significantly lower costs than under the present structure.

What the Bill Would Do

The legislation would retain the option for the individual sales by lenders and holders of SBA 7(a) guaranteed loans by giving a statutory base for SBA's present program, the aforementioned present secondary market program. The cornerstone of the bill, H.R. 4773, is the new secondary market for Government guaranteed certificates representing pooled SBA guaranteed loans.

THE NEW POOLING ARRANGEMENT

Under the new pooling arrangement which H.R. 4773 would provide as an amendment to the Small Business Act, SBA would be permitted to take such steps as are necessary to facilitate the functioning of a secondary market in the SBA guaranteed portions of loans made by banks and other lending institutions. In this regard it would permit SBA, or its agent, to issue certificates which represent the SBA guaranteed portions of the loans. The certificate would be backed by the full faith and credit of the United States and SBA would guarantee the "timely payment of principal and interest" on the trust certificates. It also would provide authority for the sale of certificates of interest in pools of these guaranteed portions in the secondary market, and for SBA to take whatever steps are necessary to facilitate these sales.

Broker/dealers could submit loan pools to SBA for review and, subject to approval, SBA could interpose its full faith and credit guarantee on the actual securities. This method would be similar to the GNMA origination process wherein approved mortgage bankers submit goods of FHA/VA loans to GNMA for its full faith and credit guarantee.

The bill would require SBA to appoint an agent to serve as the central registry recording for all sales and resales of individual SBA guaranteed loans and trust certificates in the secondary market. Such an agent would receive payment on all individual loans from the originating lenders and remit these payments to the holders. This agent would retain a fee for performing this service.

The agent, under rules and regulations to be established by SBA, also would issue trust certificates representing pools of loans (on behalf of SBA) and administer the pools. The agent would hold the individual loans for investors who would own shares in the pool of loans. The agent would charge only such fees as are necessary to cover expenses directly related to the administration and servicing of the pools. The agent would receive payments on individual loans and make the appropriate payment when due on the pool certificates to investors. In cases of delayed payments by borrowers or lenders on individual loans, the agent still would continue to make timely payments to pool investors, covering the shortfall from its fees and any payments received. SBA would guarantee timely payment to investors as per agreement with this agent and honor its guarantee on ultimate default on any loan in the portfolio.

The SBA ultimately would be responsible for covering shortfalls in the pooling arrangement. However, the Committee anticipates that funding the guaranteed timely payments could be structured so there would be no additional budgetary impact, since the guarantee of the trust certificates is basically only a "secondary" guar-

antee (the agency is already obligated for the amount of the pooled loan and the only additional exposure is the "timely" guarantee which is another way of saying that the SBA will pay interest on late payments). A fidelity bond would protect the interest of the Government from default by the agent. SBA would contract with its agent to administer the pools and promulgate rules and regulations under which the market would operate. SBA would be responsible for approving individual pools and promulgation rules and regulations with respect of pools.

In the event that a loan in a trust or pool is prepaid by the borrower, the holders of the trust certificates or other securities would receive pass-through of payments in proportion to their share of ownership in the pool. The pool, and the guarantee of timely payment of interest and principal would then be reduced in proportion to the amount the prepaid loan represents in the trust or pool.

In a similar manner, if a payment on a loan in a pool is delinquent for more than a given length of time (to be determined by contract between the SBA and agent) the SBA would repurchase the loan from the pool investors, with the size of the pool reduced accordingly.

Under the provisions of the new legislation, SBA would be responsible for a central registration of all loans and trust certificates sold which will provide necessary information to assist in monitoring secondary market operations.

The small business borrower receiving the SBA 7(a) guaranteed loan would continue to have the same rights as under present law. The lending institution making the original 7(a) guaranteed loan to the small business borrower would, as under present law, have the option of holding the loan or selling the guaranteed portion of the 7(a) loan into the secondary market by a sale of the loan either to an individual purchaser or to a broker or dealer interested in forming a pool of the entire guaranteed portions of numerous loans for resale.

The Committee's bill, H.R. 4773, would require SBA to develop procedures to promote secondary market operations. Moreover, in order to stress certain important aspects the Committee would establish some general, statutory guidelines on overall procedures to be followed by SBA.

To reduce paperwork and streamline procedures, SBA review of 7(a) guaranteed loan materials previously approved by the agency would be curtailed if the lender certifies that proper procedures have been followed.

Prepayment penalties on borrowers would not be permitted, and borrowers could pay their loans prior to maturity. By explicit statutory provision, H.R. 4773 would not affect an SBA loan recipient's prepayment, deferment, or moratorium rights under the Small Business Act.

The bill would require SBA to contract with an agent (for a period not to exceed two years) to issue trust certificates and establish a central registration and information for all loans and trust certificates sold.

The Committee's bill, to safeguard investors, would require that any seller (excluding a lending institution originating the loan or a marketer of less than four loans per year) disclose to any purchaser

of a loan or trust certificate information on the terms, conditions and yield of the loan or trust certificate. In this regard, the agency is also given authority to provide for regulation of broker/dealers in SBA guaranteed loans or trust certificates.

The bill would provide statutory deadlines for action by the agency. Within 90 days of enactment, SBA must issue regulations implementing the provisions on central registration of all SBA loans and trust certificates. Regulations implementing all other provisions of the Act are to be issued and finalized within nine months of enactment.

Provisions on pooling and sale of trust certificates could not be implemented until governing regulations are effective.

Finally, the bill would provide an extensive reporting requirement. By March 31 of each year, SBA would be required to report to the Small Business Committees of the Congress on the secondary market activity in SBA guaranteed loans for the preceding calendar year.

The bill would not authorize any funds to be appropriated.

Conclusion

Your Committee designed H.R. 4773 to give SBA statutory authority for its secondary market program instituted administratively in 1973, and to expand that program to permit the pooling of SBA guaranteed loans into larger lots for sale of fractional interest in such pools. This will encourage major brokers to participate in the program and facilitate the more efficient sale of guaranteed loans in the marketplace without any additional cost to the Government. It also will attract larger institutional investment in SBA guaranteed loans, thereby encouraging investment in, and opening up new sources of capital for, small business. The legislation would insure greater efficiency and liquidity in the secondary market thereby increasing lender participation in the 7(a) program. The new market being established would provide small concerns increased access to capital at lower, fixed interest rates.

Subsequent Action

On June 25, 1984, the House tabled H.R. 4773 and passed in lieu thereof the Senate version of the legislation S. 2375, which had passed the Senate on June 21, 1984. The President approved the legislation on July 10, 1984.

The House and Senate versions of the Act are virtually identical. The only difference between the two is a phrase inserted to prevent any possible misinterpretation of a borrower's rights. The House bill expressly provides that nothing in the bill may be interpreted to extinguish the borrower's right to prepay the loan or obtain a temporary suspension of repayments even if the loan is sold (1) to an investor or (2) to a broker who includes it in a pool. The Senate bill could be interpreted as protection only in the second instance. Clearly this is not the intent of either the House or Senate Small Business Committee and the Senate report so states. But inadvertantly the Senate did not change their bill before passage. Rather than amend the Senate bill and necessitate further Senate action,

the House accepted the Senate language as really saying the same thing.

SMALL BUSINESS COMPUTER CRIME SECURITY AND EDUCATION ACT (H.R. 3075) PUBLIC LAW 98-362

The Committee reported H.R. 3075 to the House on October 20, 1983, House Report 98-423 Part I, excerpts of which are as follows.

THE PURPOSE OF THE BILL

The purpose of the bill is to provide small businesses with information to help improve the management of their information technology, and to protect such technology from the criminal activity.

INTRODUCTION AND BACKGROUND

The use of computers by business has expanded rapidly over the last decade. As the cost and size of computer systems has diminished their use by small business has multiplied. Along with the increased use of information systems has come the increased abuse of the new technology for criminal purposes. Small businesses are particularly vulnerable to computer crimes because of a lack of resources, skills and information necessary to adequately protect their system from computer criminals.

H.R. 3075, introduced by Mr. Wyden on May 19, 1983, is designed to provide small businesses with the information necessary to evaluate and improve their computer security.

Your Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business held a hearing on the legislation on July 14, 1983, in Washington, D.C. Testifying in support of the bill were a representative of the computer software industry, a law enforcement official, authorities on computer crime, and a small businessman whose business had been victimized by a computer crime.

The legislation was considered by the Subcommittee on September 15, 1983. An amendment in the nature of a substitute, offered by Mr. Luken, was accepted by unanimous voice vote. The amendment incorporated several cost saving changes suggested by witnesses at the hearing and through informal discussions by the Members. No additional amendments were offered, and the bill was reported as amended to the full committee by unanimous voice vote.

As the use of computers has grown, so has the incidence of computer crime. Estimates of the losses in the private sector are as high as $1 billion annually, although accurately estimating losses is nearly impossible for several reasons. Victims are often reluctant to report crimes for fear of bad publicity. Also, computer crime statistics are reported, not as "computer crimes", but as ordinary white-collar crime (fraud, theft, embezzlement, etc.) This makes compilation of accurate computer crime statistics a very difficult, if not impossible, task.

Often, computer crimes are new ways of committing old crimes. Some of the more common types of computer crime are: theft of merchandise or property through the use of a computer, unauthorized use of someone else's computer, the theft, copyright infringe-

ment, or unauthorized destruction or alteration of computer stored information or programs, and financial crimes such as directing payments to phony suppliers or employees.

Your Subcommittee heard about one incident in which a family money order business lost over $100,000 because an employee was able to use his knowledge of computers to create and cash phony money orders.

Small businesses are often more vulnerable to computer crimes than large businesses. Large businesses can have elaborate security procedures, and extensive internal and external auditing. Thus, computer crimes can often be detected relatively quickly. Quick detecting, together with contingency planning and good insurance, keep the cost of computer crime for large businesses relatively low.

Small businesses suffer from a number of disadvantages. They often lack the resources, or do not recognize the need for implementing computer security safeguards. They often cannot afford to hire security consultants. In addition, small businesses lack the in-house expertise to investigate computer crimes. Management may also lack the expertise to properly oversee a company's computer operations, thereby giving the programmer or operator a virtual free-hand. Some salesmen may not inform customers of the vulnerabilities of their computer related products in an effort to present those products in a favorable light.

After a computer crime is committed, the small businessman may not be able to rely on the criminal justice system for help. Law enforcement agencies at all levels are unprepared to meet the challenge of the computer crime problem. The judicial system is equally unprepared for this challenge. Law enforcement officials encourage the preventive approach which costs far less than the long investigation, complex prosecution, and incarceration involved in a successfully prosecuted case.

However, most computer crimes never reach the prosecution state. Crimes using computers are among the most difficult to detect, and many of these crimes go undiscovered.

Two forces are emerging to encourage small business owners to pay closer attention to computer security concerns. The first is the insurance industry which is starting to vary premiums based on the amount of the insured's computer security, and the second is the growing computer security products industry. Current government research on computer security is directed primarily toward Federal agencies. The Task Force computer security guidelines, and the SBA sponsored forums and resource center called for in H.R. 3075 are designed to both educate and increase the awareness of the small businessperson to computer security problems.

What the Bill Would Do

The bill, H.R. 3075, contains congressional findings that there is an increased dependency on information technology, including computers, in the small business community; that such technology has permitted and expanded criminal activity against small business; and that small businesses are not always able to protect their information technology from computer crime.

The bill's stated purposes are to improve small businesses management of their information technology and protect it from criminal activity.

I. ESTABLISHMENT OF TASK FORCE

The bill would direct the Administrator of the Small Business Administration, within sixty days, to establish a "Small Business Computer Crime and Security Task Force". The Task Force would consist of an employee of each of the following four departments who would be named by the Department head: the Small Business Administration, the Institute for Computer Sciences and Technology of the Department of Commerce, the Department of Justice and the Department of Defense; it would also consist of five other members, appointed by the Administrator of SBA, and who would be representative of each of the following groups: the providers of computer hardware to small business, the providers of computer software to small business, the providers of insurance to small business, the providers of computer security equipment and services to small business, and the general associations of small business concerns. In addition, the Administrator would be authorized to appoint such other members to the Task Force as he deemed appropriate.

II. FUNCTION OF TASK FORCE

The function of the Task Force would be to define the nature and scope of computer crimes committed against small business; to ascertain the effectiveness of State legislation and available security equipment in preventing computer crimes against small businesses; in cooperation with the National Bureau of Standards, to develop guidelines to assist small businesses in evaluating the security of computer systems; and to recommend to the Administrator appropriate activities of an on-going resource center to assist small business in combatting computer crime.

Within eighteen months, the Task Force would submit a report to the President, the Administrator and the Congress, and would cease to exist thirty days after submission of the report.

III. RESOURCE CENTER

Not later than sixty days of receipt of the Task Force report, the Administrator of the SBA would be required to establish a Resource Center which would provide to small businesses information regarding computer crimes and security for computers. The Administrator would also be directed to provide for periodic regional forums for small businesses to improve the exchange of information regarding these matters.

Your Committee intends that the SBA will utilize its current resources to immediately make available computer security information to small businesses while awaiting the report of the Task Force.

IV. CONCLUSION

Your Committee believes that the bill, H.R. 3075, the Small Business Computer Crime Prevention Act, is an inexpensive, common sense response to the growing problem of computer crime against small business.

This bill will enable small concerns to better evaluate the security of their computer systems so that the losses due to crimes committed by computer can be minimized.

SUBSEQUENT ACTION

The House passed H.R. 3075 under suspension of the Rules on October 24, 1983. The Senate passed the legislation, as amended, on May 24, 1984. The House agreed to the Senate amendments, with amendments, on June 27, 1984. The House-passed version of H.R. 3075 would have established a Small Business Computer Crime and Security Task Force to report to the President and the Congress on the nature and scope of computer crime committed against small business and on what could be done to make computer crime systems more secure.

The Senate amendment, in lieu of establishing a Task Force, establishes a Small Business Computer Security and Education Advisory Council to provide advice and recommendations to the SBA Administrator. Also the Senate amendment permits SBA to provide management assistance to small business concerns by allowing SBA to cosponsor training sessions with profitmaking concerns.

The House in agreeing to Senate action imposed specific restrictions upon SBA cooperation with profitmaking concerns to provide training. The House sunset the cooperation with profitmaking concerns provisions and required an evaluation report to Congress on these provisions' impact within four years. The House was cautious because profitmaking concerns have never been permitted to cosponsor training sessions with SBA due to the possible conflict of interest problems and perception by the public of Government endorsement of the profitmaking concern due to the cooperation. These restrictions will provide adequate safeguards.

The Senate agreed to the House amendments on June 27, 1984, clearing the measure for the White House. The President signed H.R. 3075 into law on July 16, 1984.

SMALL BUSINESS DEVELOPMENT CENTER EXTENSION (H.R. 4013) PUBLIC LAW 98-177, AND THE SMALL BUSINESS DEVELOPMENT CENTER IMPROVEMENT ACT OF 1984 (H.R. 5334) PUBLIC LAW 98-395

Public Law 98-177 extended from October 1, 1984, to January 1, 1985, the sunset for the Small Business Administration management assistance program through the nationwide system of Small Business Development Centers. In order to extend further this program, the Committee reported H.R. 5334, with amendments, to the House of Representatives on May 10, 1984, House Report 98-739, excerpts of which are as follows:

The Purpose of the Bill

The Committee's bill, H.R. 5334, is intended to extend for four years the Small Business Administration's management assistance program known as the Small Business Development Center (SBDC) program, now scheduled to sunset on January 1, 1985.

In addition to extending the SBDC program, the Committee is acting to increase the available benefits from the more than thirty such small business management assistance programs now in existence throughout the country through technical and clarifying amendments to assist in program delivery.

Small businesses are helped by the primarily university-operated SBDC's in confronting a wide range of management and technical problems. Through matching State and Federal grants, SBDC's have assisted more than 260,000 small businesses and can reach even more.

The hands-on, problem-solving assistance provided under the SBDC program is vital to improved management in the small business community and enhanced innovation and productivity. With the added benefits which H.R. 5334 will provide with no increased program costs, the SBDC's can do more to assist small business.

Introduction and Background

Numerous studies have demonstrated that lack of management expertise and assistance is one of the major contributing factors to small business failures. Your Committee examined this problem in detail, as did the Small Business Administration, and both concluded that a possible solution was for SBA to form a partnership with universities, State governments and other entities to provide help at the local level. In 1980 Congress enacted Public Law 96–302, containing the new partnership provisions as a Small Business Development Center program.

Under the provisions of that law, SBA was authorized to enter contracts and cooperative agreements with any State government or State agency, any regional entity, any State chartered corporation or institution of higher education or virtually any other group to provide counseling, assistance in technology transfer, information on regulations, research into business problems and other types of management assistance to the small business community. The key difference between this program and others which had been authorized in the past, however, was that those institutions applying to participate in the program were required to provide matching funds in an amount equal to the SBA funds. Not only does this matching funds requirement double the size of the program, but infusion of local funds insures interest and accountability at the local level.

At the time that Public Law 96–302 was enacted, your Committee did not want to create simply another new program without follow up consideration and evaluation of its merits. Accordingly, the program was designed to be conducted for four years and then to sunset automatically if not extended. The first sunset provision was October 1, 1984 at which time the program would have been repealed.

After preliminary oversight in the 1st Session of this Congress, and as a preliminary measure, H.R. 4013, P.L. 98-177 changed existing law and extended from October 1, 1984, to January 1, 1985, the sunset or repeal of the Small Business Development Center management assistance program.

During the four years of program operation, small business development centers have been established in the District of Columbia and 31 States. Although not required by law, the existing SBDC's are all operated in connection with universities. To date, these centers have provided hands-on management assistance to over 260,000 businesses.

The States now participating in the program and the current SBA funding are as follows:

Date of program admission	State and lead participant	Current Federal funding level
Fiscal year:		
1977	Maine.—University of Southern Maine, Portland, Maine	$344,125
1980	Massachusetts.—University of Massachusetts, Amherst, Mass	796,424
1981	Connecticut.—University of Connecticut, Storrs, Conn	464,936
1983	Vermont.—University of Vermont, Burlington, Vt	150,000
1977	New Jersey.—Rutgers University, Rutgers, N.J.	332,200
1979	Pennsylvania.—University of Pennsylvania, Wharton School, Philadelphia, Pa	2,321,776
1982	West Virginia.—University of Charleston, Charleston, W. Va	329,467
1977	District of Columbia.—Howard University, Washington, D.C	538,662
1982	Delaware.—University of Delaware, Newark, Del	132,979
1977	Georgia.—University of Georgia at Athens, Athens, Ga	1,472,606
1977	Florida.—University of West Florida, Pensacola, Fla	1,706,399
1979	South Carolina.—University of South Carolina, Columbia, S.C	527,158
1980	Alabama.—University of Alabama at Birmingham, Ala	786,945
1981	Mississippi.—University of Mississippi, Jackson, Miss	610,837
1981	Kentucky.—University of Kentucky, Lexington, Ky	539,237
1979	Wisconsin.—University of Wisconsin, Madison, Wis	1,615,500
1979	Minnesota.—College of St. Thomas, St. Paul, Minn	583,296
1983	Michigan.—Wayne State University, Detroit, Mich	242,500
1979	Arkansas.—University of Arkansas at Little Rock, Little Rock, Ark	571,161
1983	Louisiana.—Northeast Louisiana State University, Monroe, La	313,275
1977	Missouri. –St. Louis University, St. Louis, Mo	491,450
1977	Nebraska.—University of Nebraska at Omaha, Omaha, Nebr	513,118
1981	Iowa.—Iowa State University, Ames, Iowa	484,672
1979	Utah.—Utah State University, Salt Lake City, Utah	385,757
1979	Washington.—Washington State University, Pullman, Wash	691,171
1983	Rhode Island.—Bryant College, Smithfield, R.I	289,223
1983	Kansas.—Wichita State University, Wichita, Kans	256,130
1984	New Hampshire.—University of New Hampshire, Durham, N.H	133,825
1984	Tennessee.—Memphis State University, Memphis, Tenn	200,000
1984	Illinois.—Illinois Department of Commerce and Community Affairs, Springfield, Ill	397,750
1984	Texas.—University of Texas at Arlington, Tex	100,000
1984	Oregon.—Lane Community College, Eugene, Oreg	350,000

In addition, applications for SBDC funding have been filed from New York, North Carolina, Houston, Texas, and Oklahoma, with interest having been expressed by Ohio, Indiana, California, Nevada and Puerto Rico.

Looking toward program reauthorization, extensive SBDC program hearings this Congress began with a joint hearing of the Subcommittee on SBA and SBIC Authority Minority Enterprise and General Small Business Problems of the House Committee on

Small Business and the Committee on Small Business of the United States Senate in Seattle, Washington on July 6, 1983.

The Subcommittee held further SBDC hearings in Atlanta, Georgia, on August 30, 1983, and in Columbia, South Carolina, on December 9, 1983. Witnesses included SBDC officials and numerous small business clients who had used SBDC services.

On April 4, 1984, the Full Committee held a final hearing on H.R. 5334, Chairman Mitchell's bill to extend for an additional four years the sunset on the Small Business Development Center program, to authorize the appropriation of such sums as may be necessary to carry out the program, and to make a number of technical and clarifying changes to assist in the program delivery and evaluation.

The Full Committee marked up H.R. 5334 on April 4, 1984, and in subsequent action on that date ordered the bill, as amended, reported to the House by a unanimous vote.

Need for the Legislation

There are more than 10 million companies in the United States classified as small. Of these, 3.4 million do $5 million or less in business each year and employ fewer than 100 workers each. Nonetheless, small business contributes a surprising 43 percent to the gross national product.

Small concerns provide more employment than all Fortune 500 companies combined. Small business, directly or indirectly, provides a livelihood for more than 100 million Americans.

Normal working hours don't exist for those running their own business. To most small business people, their work is their hobby, their enjoyment, as well as their livelihood. They believe they have a valuable product or service to offer. They are committed to serve and they are committed to the American dream of success and profit.

Small business people are pioneers, risktakers and decisionmakers dedicated to the market system and committed to free enterprise. If America's revitalization is to succeed, it must be spearheaded by small business.

Unfortunately, a business and economic philosophy of market enterprise, risk, and capitalism, and even worthwhile products and services alone won't guarantee the success. The small business entrepreneur also must know how to market, package, manage and finance that idea or product.

The SBDC's are an important vehicle to meet this need and also the need for technology transfer to small business. Small businesses need information about market opportunities, about how to reduce costs, about how to reach customers, price merchandise, develop and assess new products. They need help and assistance with financing, with legal problems, with managing wage and energy costs. They need assistance with regulatory problems, State, Federal, and local taxes, and they need counseling and training in methods of managing for greater effectiveness and efficiency. SBDC's are providing this assistance and making small business more viable and more productive. SBDC's are a valuable partner to small business.

The participating universities consider the SBDC an integral part of their educational programming mission to the citizens of their States. The State university program participants are committed to the concept and States have demonstrated this commitment both in terms of educational policy and by hard dollar support. The small business development center is a vital and strong link in a network of a Federal Government program, State universities, and private sector businesses, all of whose efforts benefit the Nation's overall economic and social well-being.

WHAT THE BILL WILL DO

The Small Business Administration's Small Business Development Center program now set to terminate at the end of this calendar year would be extended for approximately four years, but again sunset at the end of fiscal year 1988.

The bill also would authorize the appropriation of such sums as might be necessary to carry out the Federal share of this matching funds program and to pay National Advisory Board expenses and also management information and evaluation expenses. The bill would not change the existing SBDC program level set by the Small Business Act at $65 million. This limit contemplates the program as fully-implemented nationwide when the remaining nineteen States are brought into the program.

In addition, the bill would adopt several programmatic changes to improve SBDC services and expand management assistance and technology transfer benefits to small concerns throughout the country.

The bill would require that the term of any contract for grants under the SBDC program be made either on a calendar year basis or to coincide with the Federal fiscal year.

The bill would limit the amount of part-time SBDC employee salaries eligible for purposes of calculating SBA matching funds to no more than the amount paid to full-time employees and used for match purposes. A full-time staff director would also be required. This new match requirement would not be effective until January 1, 1985.

The bill would continue to provide for State/Federal planning cooperation by reinstatement of a sunset statutory requirement that any application for an SBDC grant conform to a State plan if one has been adopted. This would permit each State to determine the exact operating characteristics which best suit the needs of its small business community.

The bill would clarify congressional intent that the SBDC program establishes an equal partnership between the SBA and the SBDC for the delivery of services to the small businesses.

The bill would provide that each intake center, i.e., those sites where the SBDC actually meets with the small business clients, be located in easily accessible facilities such as storefront offices.

Finally, the bill would help assure effective program oversight by eliminating the present reporting requirement and substituting a provision requiring that by January 1, 1985, SBA develop a proposal for biannual on-site evaluation of each SBDC with the assistance of at least one other SBDC; and by requiring SBDC management

information system services to continue to be provided by contract through outside expertise through October 1, 1986, until SBA's proposed system is safely functional and demonstrated to be cost effective.

Conclusion

The small business community and the Nation are greatly troubled by our national economic dilemma. Unemployment has hovered between 6 percent and 7 percent even in the past few years and surpassed 10 percent during the past recession. Small business is the prime job-creating force in the economy. About 60 percent of all jobs in the United States are generated by firms with 20 or fewer employees and about 50 percent created by independent, small entrepreneurs so that the national economic development policy must stimulate job growth and must understand the reality that this can best be accomplished by our small business community. Innovation has been lagging in the United States yet small business is the most effective source of innovation in the economy.

The rate of American productivity improvement has declined to near zero but it is apparent that small business productivity is higher than that of big business. A loss of competitiveness could be an economic disaster. Everything possible should be done to encourage productivity, lest Germany and Japan overtake the United States in the mid eighties. Small business is the key to competition and therefore, increasing our productivity.

Congress recognizes that small businesses create the great majority of jobs in this country. A recent study by the Bureau of Business Research at the University of Wisconsin-Madison School of Business is revealing. From 1973 to 1978, the study shows, larger manufacturers in Wisconsin cut 9,300 jobs; smaller manufacturers, meanwhile, were creating 46,000 jobs. Small business was especially hard hit by the most recent cycle of recession. The destructive impact of small business failure is felt not only by individual owners and managers, but by thousands of persons whose jobs depend on small business. When a small business fails, existing jobs are lost and the potential for additional job creation is forfeited.

Because of lagging skills of small business the United States pays a heavy price (estimated at $4 billion annually) for the nearly 15 percent per year bankruptcy rate of small business. The Committee is convinced that training and counseling for the small business person lessens any such failure rate. Half of all new small businesses fail each year. But the failure rate of firms counseled by the SBDC is only one-tenth as high.

Congress is concerned with America's balance of payment problems and today's serious deficit position. Promotion of exports through SBDC assistance to small businesses who could be—but aren't—exporting will help greatly.

Congress is also concerned about increasing concentration in the American economy. The innovative, dynamic smaller firms are being crowded out by large public and private concerns. Small business will have to produce more to counter this trend.

This explains why in 1980 Congress established the program of Small Business Development Centers to provide management assistance, education, and research to the small business community.

The successful SBDC pilot program has proved that a statewide network of educational institutions, jointly funded by Federal and State dollars, offers the most cost-effective means of providing quality training and, particularly, long-term counseling to the small business client. By no other means can we as rapidly, as cheaply, and as effectively provide training and counseling where most small business clients reside.

By no other means can we mobilize so much legal, technical and professional small business help for small business clients in so short a time. By no other means can we offer small business people "big business-like" help at so small a cost. Linking university skills and resources to small business clients can produce results which are in the national interest.

The future need for SBDC services will expand beyond those services currently being provided. The United States is experiencing a major and irrevocable structural change in its economy. We are entering an era of high technology—personal computers, robotics, and telecommunications. Changes will be rapid and continual. Small business will need to understand and adjust to these changes.

The United States will see created in the coming high-technology environment new businesses, new technologies, and new ways of doing business. Small business will need to develop and adapt these skills in order to survive and flourish.

The importance of small business to the national economy will continue to grow. However, structural changes and the need to develop and employ new skills will require an expanded role for SBDC's and their linkages to both universities and vocational/training schools.

Small business in this country can provide jobs to get America back to work—to re-industrialize, to innovate, to increase productivity, to export. Small businesses can play a major role in this future if they develop and expand the skills needed to cope with change.

The Small Business Development Centers have a major role and deserve continued congressional support for their assistance to small business.

Subsequent Action

The Senate passed its version of SBDC reauthorization legislation, S. 1429, on November 16, 1983, after holding three hearings on the program and conducting two independent evaluations.

On May 14, 1984, the House voted to suspend the rules and pass H.R. 5334, as amended, to improve the Small Business Development Center program. Subsequently, this passage was vacated and S. 1429, a similar Senate-passed bill, was passed in lieu after being amended to contain the language of the House bill as passed. The House insisted on its amendments to S. 1429, and asked a conference. Appointing as conferees Representatives Mitchell, Smith of Iowa, Addabbo, McDade, and Conte.

House-Senate conferees made additional modifications to the SBDC program. A detailed explanation of the changes made in the versions of the bill (S. 1429) as reported by both Houses and the new law is to be found in the Conference Report adopted by the Senate on August 6, 1984 and by the House on August 8, 1984 (House Report 98-955).

The following brief explanation highlights the important changes made in the SBDC program by Public Law 98-395, August 21, 1984.

New Federal Match Requirement

Former statutory language authorizing financial assistance to Small Business Development Centers required each recipient to provide matching funds derived exclusively from non-Federal sources, in an amount equal to the grant. The matching requirement specified that no more than 50 percent of the recipient's match is permitted to be in the form of inkind contributions or indirect costs. This statute did not specify the composition of the other 50 percent of the match, although it was understood to be cash.

The new law clearly states that the other 50 percent of the required match would be in the form of an upfront cash contribution from non-Federal sources. To answer concerns that some SBDC's might not be able to meet this upfront cash requirement on an immediate basis, the conference agreement provided for a transition period to allow individual centers and State legislatures, when and where appropriate, to make the necessary adjustments in their budget procedures.

SBDC Authorization

Former law authorized the appropriation of "such sums as may be necessary" to provide funding for SBDC's based on a formula comparing population to be served to the total U.S. population, with a program cap of $65 million. The 1984 appropriation for the SBDC program was $25 million. The appropriation for fiscal year 1985 is $28.5 million.

Under the new law, fiscal year 1985 has a $30 million program level. For fiscal year 1986 and every year thereafter, however, in order to accommodate anticipated growth in the program without unduly imposing restrictive program levels, the new law authorizes "such sums as may be necessary" to be appropriated solely to operate the SBDC program. The statute still contains as part of the allocation funding formula an overall program cap of $65 million.

Peer Review

A one-time evaluation of the SBDC program, with a report submitted to the Congress was undertaken and completed in 1983. In order to ensure that this program and individual centers continue to be monitored, the new law requires that SBA develop and implement a proposal for an onsite evaluation of each federally-funded SBDC. This proposal must be completed by SBA within 6 months of enactment. The evaluation process will be conducted every 2 years

and provides for the participation of representatives of at least one other SBDC in each of the reviews, i.e., a peer review.

SUNSET OF THE SBDC PROGRAM

The SBDC program was due to expire or "sunset" on January 1, 1985. The Congress believes that the SBDC program is a valuable resource and asset to the small business community and should be made permanent. However, in order to ensure the continued success of the program, it is necessary that Congress continued to effectively monitor and examine the SBDC's. Therefore, the new law provides for a sunset date of October 1, 1990.

SMALL BUSINESS AND FEDERAL PROCUREMENT COMPETITION ENHANCEMENT ACT OF 1984 (H.R. 4209) PUBLIC LAW 98-577

The 98th Congress substantially revamped the Federal procurement process. The Competition In Contracting Act enacted as Title VII of the Spending Reduction Act of 1984 (P.L. 98-369), revised and updated enabling legislation generally providing for the purchase of goods and services by the Federal Government. The Small Business and Federal Procurement Competition Enhancement Act of 1984 (P.L. 98-577), on the other hand, deals with the narrower issues of technical data management, contractor qualification, contract pricing, and the "breakout" of more goods for competitive procurement. P.L. 98-577 seeks to achieve its goal of increased competition through the increased utilization of small business as prime contractors to the Government.

INTRODUCTION AND BACKGROUND

H.R. 4209 was introduced by Representative Barbara Boxer and initially co-sponsored by Subcommittee Chairman Berkley Bedell. To further carry out small business procurement programs established by the Small Business Act, the SBA has assigned "procurement center representatives" (PCRs) to 52 Federal acquisition centers. Their major function is to maximize potential opportunities for small business to obtain Federal contracts. In late 1979, SBA initiated a pilot program to complement this effort by adding a "breakout" PCR to four Air Logistic Centers. These breakout PCRs were to review sole source purchases of spare parts and, when appropriate, recommend actions that would lead to the use of competitive procurement methods.

The pilot program was extensively investigated both by the General Accounting Office and your Committee and found to be tremendously cost effective. In fact, one of these breakout PCR's demonstrated to your Committee how, in one year, he saved the Government 400 times his salary due to his activities resulting in the reduction of sole source contracts. In view of such evidence, H.R. 4209 was introduced to both codify and expand this highly successful program.

As reported by your Committee, H.R. 4209 (House Report 98-528) would amend Section 15 of the Small Business Act (15 U.S.C. 644) by requiring the SBA Administrator to assign to each major procurement center a breakout procurement center representative

(BO-PCR). These BO-PCRs shall be in addition to the regular PCR referred to in subsection (k)(6) of Section 15 of the Small Business Act.

The break-out procurement center representative is given the following responsibilities:

(a) Review procurement method codes to ensure that the capabilities of small business concerns are fully considered, and to conduct independent studies and evaluations necessary to change restrictive codes to codes that will encourage increased competition.

(b) Review procurement requirements proposed or projected to be purchased under consolidated solicitations which limit the opportunities of small business concerns to compete as prime contractors and to recommend reducing the number of those requirements in consolidated solicitations to promote the maximum opportunity for small businesses to submit bids.

(c) Review and, when appropriate, conduct a value analysis of engineering change proposals received from any source to determine whether a proposal will save the Government money while achieving the acquisition objective.

(d) Review the system of storage and access to technical data within a procurement center, and to recommend changes in the system to encourage competition and small business bids on spare parts procurements.

(e) In consultation with the SBA Administrator recommend to the head of the appropriate purchasing activity (1) changes in procurement policies and procedures; (2) changes in procurement method codes; and (3) the desirability of value engineering change proposal. The head of the purchasing activity that receives recommendations from a breakout procurement center representative must, within 30 days, issue a written decision accepting or declining the recommendation.

This section of the bill also requires the Director of Small and Disadvantaged Business Utilization of each agency with a major procurement center to assign and colocate, four small business technical advisors that are full-time employees of the procuring activity and are well-qualified, technically trained and familiar with the supplies, services and spare parts purchased by the activity whose sole duty is to assist each breakout procurement center representative. At least one of these technical advisers must be an accredited engineer.

A major procurement center is one that processed a contract volume of not less than $150,000,000 in spare parts in the preceding fiscal year.

Section 2 would amend Section 15(h) of the Small Business Act to require the Comptroller General to prepare and submit annual reports to the Committees on Small Business of the House and Senate on the cost savings achieved during the year by the efforts of the breakout procurement center representatives, an evaluation of the increased competition resulting from their efforts and any other information the Comptroller deems appropriate.

This legislation was to be the vehicle for more extensive rewrites of Federal procurement law which became P.L. 98-577. P.L. 98-577 reflects House and Senate consideration of H.R. 4209, H.R. 2133 (in-

troduced by Chairman Mitchell on March 16, 1983), and S. 2489 (introduced by Senator Weicker on March 29, 1984).

Both House bills were referred for consideration to your Committee's Subcommittee on General Oversight and the Economy, chaired by Representative Berkley Bedell. The Subcommittee conducted detailed investigations and held legislative hearings on October 5 and 6, 1983 in Washington, D.C., and on October 12, 1983 in Jamestown, N.C.

After careful and extensive review of additional materials, data and investigative reports made available to the Subcommittee, mark-up was conducted on October 27, 1983. The Subcommittee favorably reported both measures by a unanimous vote (11–0) of those Members present.

The Full Committee met on November 3, 1983, and by a vote of 37–1, ordered the measures favorably reported, as amended by its Subcommittee.

H.R. 2133 was reported by H. Rpt. 98–541 and placed on the Union Calendar on November 10, 1983. H.R. 4209 was reported by H. Rpt. 98–528, placed on the Union Calendar on November 10, 1983, but subsequently placed on the Suspension Calendar and passed the House under Suspension of the Rules on May 21, 1984.

On August 7, 1984, the Senate passed H.R. 4209 with an amendment in the nature of a substitute. The Senate amendment was identical to the text of S. 2489 as reported by the Senate Committees on Small Business and Armed Services. On October 2, 1984 the House agreed to the Senate amendment with an amendment in the nature of a substitute offered by Chairman Mitchell. The Senate agreed to the Mitchell substitute on October 4, 1984, thus clearing the measure for the President. On October 30, 1984, H.R. 4209 was signed into law and became Public Law 98–577.

The Need for New Legislation

Congress has become increasingly alarmed by procurement policies and practices of the Federal Government that are unnecessarily restrictive of competition and that discourage the participation of a greater number of business concerns in Government acquisitions.

The figures for small business awards in Federal procurement, for example, have been steadily declining since 1979. In FY 1983 the percentage of Government prime contract awards to small business was the lowest it's been since 1972. Even though 99 percent of all firms are classified as small, last year they received only 18.6 percent of the prime contract dollar. It is a matter of grave concern that these declining figures coincide with increased defense spending, scandalous spare parts overcharges, and larger percentages being funnelled to favored big business contractors. P.L. 98–577 is designed to address the problems encountered by business concerns that attempt to break into the defense and civilian acquisition system. It will achieve cost savings, and will permit a more equitable distribution of Federal procurement opportunities.

What the Law Will Do

(A) PURPOSES

P.L. 98-577 contains a statement of purposes, namely: 1) to eliminate methods and procedures that have the effect of limiting unnecessarily competition for Government contracts, 2) to use Government procurement opportunities as a means of expanding the resource base of available businesses capable of supplying our Nation's industrial needs, and 3) to provide greater opportunities for the participation of small business and small business concerns owned and controlled by socially and economically disadvantaged individuals in Government procurement. The law accomplishes these purposes by amending the Small Business Act, the Federal Property and Administrative Services Act, and the Office of Federal Procurement Policy Act.

(B) PLANNING FOR FUTURE COMPETITION

Section 201 of P.L. 98-577 requires civilian agencies to consider and plan for future acquisitions of spare parts and components in awarding contracts for all major systems. With due consideration to the purpose of the system to be acquired and to the technology that will be needed, agencies may consider, in evaluating the price, proposals that provide for items that are available on the open market. They may also consider, as part of the price evaluation, the availability of technical data for competitive reprocurement and the development of multiple sources for the production of items needed in substantial quantities. These considerations will be made "up front" so that total cost over the life-span of the system can be better evaluated. In sole source contracts, these considerations may be also objectives for price negotiations.

There will undoubtedly be instances when the Government, in order to acquire state-of-the-art technology, will want to deal with business concerns unwilling to reveal valuable trade secrets. This section is not intended to require such businesses to give up their data rights as a cost of doing business with the Government. This provision permits the consideration of such matters in price evaluation only and only when the agency believes the consideration of such matters is appropriate. It is not your Committee's intent that these matters always be considered when negotiating price nor that such matters should affect the evaluation of a proposal's technical merit.

(C) QUALIFICATION REQUIREMENTS

One of small business' most pressing problems has been their virtual exclusion from the bidding process by "prequalification" procedures. Section 202 of P.L. 98-577 contains provisions applicable to civilian agencies that open up the bidding process and encourage small business concerns to demonstrate their capabilities, to become qualified as acquisition sources, and to have their products qualified to meet the standards established by the agencies. These provisions allow all businesses to compete for Government contracts, that is, to have the opportunity to submit a bid or an offer

and have it considered. While your Committee does not change any quality assurance standard, the law makes these standards, in effect, elements of responsibility to be treated as all other responsibility issues are now treated.

(D) VALIDATION OF PROPRIETARY DATA RESTRICTIONS

Many contractors and subcontractors have expended substantial time, energy, and money to develop innovative technologies or processes that are vitally needed by our Government in defense and civilian pursuits. P.L. 98–577 recognizes the need to encourage private industry to make available to our Government state-of-the-art technology, the best products and services available from the creative genius of United States business. Prior to P.L. 98–577 the law provided protection for trade secrets and commercial information, the disclosure of which could jeopardize the legitimate commercial position of business concerns engaged in performance of Government contracts. P.L. 98–577 does nothing to erode the legitimate rights of business concerns to place restrictions upon disclosure of technical data and the ability to assert their proprietary rights in intellectual property.

The new law does recognize, however, that at times technical data has been improperly designated as "restricted," and that the Government, on occasion, has failed to assert properly its legitimate rights. The effect of both these situations is to force the Government into a non-competitive reprocurement situation. P.L. 98–577, accordingly, provides a mechanism for the challenge and validation of contractor rights that balances both the Government's need to increase competition and its need to promote innovation through the commercial exploitation of proprietary data.

The validation procedures contained in Section 203 establish basic due process protections as to notice, adequate response time, and opportunity for hearing, for those whose asserted claims are challenged. A contracting officer may only initiate a challenge if he/she has reasonable grounds to question a restriction on the right of the Government to use such data and, then, only if such data is needed for competitive reprocurement.

If the contractor (or subcontractor, at any tier) is found not to be substantially justified in the assertion, the Government may recover costs of the challenge unless such payment would be unjust. On the other hand, the Government is restrained from instituting wide-scale and indiscriminate challenges in that the Government must assume the cost accruing to a business in defending governmental challenges found to be not in good faith.

(E) TECHNICAL DATA REGULATIONS

P.L. 98–577 requires the issuance of governmentwide procurement regulations dealing with technical data within 6 months after its effective date.

Considerations as to what constitutes a legitimate proprietary right are extremely complex. The new law provides that those responsible for drafting the Federal Acquisition Regulations (FAR) shall include a definition of legitimate proprietary rights. P.L. 98–577, however, requires that the regulations must contain certain

congressionally mandated provisions and must give consideration to a specific grouping of identified factors. The regulations must also provide for nine (9) contract clauses dealing with proprietary rights that agencies are to use in appropriate situations.

For both civilian and military agencies P.L. 98–577 requires that the technical data regulations not impair any right of the United States or any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. With respect to civilian agencies only, the regulations must contain a prohibition on the Government's requiring technical data as a precondition for its purchase of any commercial item to which that data pertains unless such data is either offered for sale to the Government or is necessary for the Government to maintain or operate the commercial item. For military agencies, this commercial product "exemption" is to be a consideration of the Secretary of Defense in promulgating DOD's technical data regulations as its supplement to the FAR.

The FAR must also contain two other mandatory provisions of applicability to civilian agencies. Except as otherwise provided for in Federal law, civilian agencies must take unlimited rights in technical data if such data were developed exclusively with Federal funds, required as an element of contract performance, and needed to insure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. Second, civilian agencies are also given a right (which may or may not be exercised, as appropriate) to take an unrestricted royalty free right to use, or have its contractors use, for governmental purposes (but not involving publication outside the Government) technical data developed exclusively with Federal funds.

In addition to these mandatory factors, P.L. 98–577 requires that the regulations give consideration to:

(1) the source of funds used to develop the technical data;

(2) the statement of congressional policy and objectives recited in the University, Small Business and Patent Procedures Act; Small Business Innovation Development Act of 1982, and the Small Business Act; and

(3) the interest of the United States in developing and locating alternative sources of supply and manufacture.

The nine contract clauses required to be prescribed by the regulations deal with:

(1) defining the respective rights of the United States and the contractor or subcontractor regarding the technical data to be delivered under the contract;

(2) specifying the delivery schedule for such data;

(3) referencing the procedures for dealing with the acceptability of such data;

(4) establishing separate line items for such data;

(5) identifying technical data to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to keep current the technical data delivered under the contract;

(7) requiring the contractor to give its written assurance that the technical data delivered is complete and accurate;

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(8) establishing remedies to the United States in the event such technical data is found incomplete or inadequate; and

(9) authorizing the head of the agency to withhold progress payments or take any other appropriate remedy if the contractor does not meet the requirements of the contract pertaining to the delivery of the data.

P.L. 98-577 requires, in order to insure compliance with all these provisions, that the Secretary of Defense, the Administrator of the General Services Administration, and the Administrator of the National Aeronautics and Space Administration submit to the Congress a joint report detailing how these regulations give consideration to the factors specified for consideration in this section of the law.

(F) BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

P.L. 98-577 establishes a position of Breakout Procurement Center Representative whose duties relate to the breakout of items for competitive procurement and to the recommendation of procedures to increase competition. Such a PCR is to be stationed at each DOD major procurement center where yearly purchases of components total at least $150 million and at such other centers as the SBA Administrator deems appropriate. In the few instances where such personnel have been so assigned in the past, cost savings have amounted to millions of dollars.

(G) MISCELLANEOUS PROVISIONS

P.L. 98-577 contains many other provisions that foster competition and encourage the participation of small business. For example, it prohibits SBA from making discretionary a small business certificate of competency referral for any reason not specifically authorized by law. In addition, the law establishes a contractual requirement for all contracts above $10,000 that small businesses and small business concerns owned and controlled by socially and economically disadvantaged individuals participate to the maximum practicable extent in subcontracts for subsystems, components, and services for major systems and that prime contractors establish procedures to ensure timely payments to their small business subcontractors.

Other sections of the law reconcile the Commerce Business Daily notice provisions required by the Competition in Contracting Act (P.L. 98-369) with similar provisions required in Section 8(e) of the Small Business Act, as amended by P.L. 98-72. These new amendments also require additional information to be made available to prospective offerors to assist them in making a sound decision about requesting bid sets or solicitation materials.

Other provisions of the Small Business Act and Competition in Contracting Act are addressed to ensure that all small business procurement programs are in no way impacted by the recent passage of P.L. 98-369.

The additional effort required by breakouts and competitive procurement methods has often gone unrewarded in personnel evaluations. A contracting officer is often evaluated by measuring output rather than cost savings or the furtherance of statutory objectives

and purposes such as the development of additional source among small business concerns or small business concerns owned and controlled by socially and disadvantaged individuals. Section 501 of P.L. 98-577 requires agencies to ensure that appraisal systems for personnel charged with procurement duties consider and recognize efforts to achieve such statutorily mandated goals and purposes.

CONCLUSION

The American people demanded that Congress take action to address waste and abuse in Government purchases. P.L. 98-577 is a wholly appropriate response to these concerns. Through its provisions, increased competition and small business utilization will result both in cost savings and expansion of the industrial mobilization base.

CHAPTER 5.—COMMITTEE LEGISLATION REPORTED

This chapter covers the legislation which the Committee reported to the full House, but which did not become law. This format also provides the background and purpose of the legislative initiative and the Committee's action in reporting the legislation. Any subsequent action is also noted. The legislation reported by the Committee which does not become law has historically served as the basis for the Committee's beginning legislative agenda in the succeeding Congress.

SMALL BUSINESS COMPETITION FOR FEDERAL PROCUREMENTS (H.R. 2133) HOUSE REPORT 98–541

H.R. 2133 was introduced by Chairman Mitchell and initially co-sponsored by Representative Addabbo. At a full Committee meeting held November 3, 1983, the measure was ordered favorably reported, as amended, (H. Rpt. 98–541) by a vote of 37–1. At the time of filing, the bill had a total of 42 co-sponsors.

The purpose of H.R. 2133 was to clarify and expand presently existing programs and policies contained in the Small Business Act that are intended to increase competition by increasing the involvement of small business in the Federal procurement process. Statistics compiled by your Committee provide compelling justification for further legislative intervention in this process.

The share of the Federal prime contract dollar awarded to small business is disproportionately low. According to data supplied at the request of your Committee from the Federal Procurement Data Center, of the $475 billion of Federal contracts awarded over the period FY 1979 through the first six (6) months of FY 1983, small business received only $80.6 billion, or a mere 17 percent of the total. However, by Federal definition, over 99 percent of all business establishments are classified as small.

Statistics also indicate that this trend is worsening. The Department of Defense (accounting for approximately 80 percent of the Federal purchase dollar) reports that the percent of prime contracts awarded to small business has fallen from 20.8 percent in fiscal year 1970; to 20.4 percent in both fiscal year 1980 and fiscal year 1981; to 19.7 percent in fiscal year 1982; and to 18.8 percent in fiscal year 1983.

Evidence further indicates that Federal procurements are highly concentrated in the hands of a few large business concerns. In fiscal year 1982, the top 25 DOD prime contractors accounted for nearly 46 percent of the entire purchase dollar; the top 5 prime contractors accounted for 19.6 percent of the budget, or nearly the same amount that was awarded to all small business concerns (19.7 percent). This bill was intended to reverse these negative trends.

The major provisions of H.R. 2133 would have provided for the following:

(1) Sole source contracts for spare or replacement parts may be awarded only when the head of the buying activity determines that one of five narrowly-defined exemptions has been met. SBA may, in addition, appeal a sole source decision if it believes that the exemption was improperly granted.

(2) After consulting with small businesses, the Office of Federal Procurement Policy (OFPP) would be required to issue regulations on proprietary rights as a part of the Federal Acquisition Regulations (FAR) within 6 months after the effective date of this bill. Such regulations must address six specific issues designed to increase the opportunity for small business to compete for contracts to provide spare parts.

(3) A Federal agency would be prohibited from refusing to consider an offer made by a small business concern solely because it is not on a "qualified bidders list" or because its product is not on a "qualified products list."

(4) The bill prohibits SBA from refusing to accept a Certificate of Competency (CoC) referral and from limiting the availability of the CoC procedure due to the size of the contract or the nature of the work to be performed. This review process is the only recourse available to a small contractor who has been denied a contract because of "non-responsibility," even though it has submitted the lowest price.

(5) A small business set-aside is required for the award of any Federal contract if the contracting officer reasonably expects that two or more responsible small business concerns will submit offers at reasonable prices and that delivery of the product/service will be rendered within the prescribed time period. SBA is authorized to appeal a negative set-aside determination.

(6) The contracting officer is to presume that the criteria for small business set-asides are met for all contracts between $25,000 and $2 million, unless such presumption is rebutted in written determinations and findings.

(7) The value of contracts to be reserved for exclusive competition among small business is raised from the present maximum of $10,000 to $25,000.

(8) Commercial activities which are converted to contract must be packaged in a way to promote the maximum opportunity for small business. This would, in effect, eliminate most umbrella or consolidated type contracts.

(9) Present law requires the head of each agency and SBA to negotiate yearly procurement goals for prime and subcontracts with small and small disadvantaged business concerns. Under the terms of the bill, if goals are not established within the first 60 days of the fiscal year to which they pertain, prime and subcontracting goals will be imposed by SBA.

(10) The bill sets forth priorities in carrying out the small business and labor surplus are set-aside programs.

(11) SBA would be required to submit additional information to accompany its annual reports to the Congress on subcon-

tracting plans which it found to be deficient but which were accepted by Federal agencies.

Floor consideration of H.R. 2133 was indefinitely postponed pending consideration of the Senate passed version of H.R. 4209 (Small Business Breakout Procurement Center representatives).

The Mitchell substitute to H.R.4209 (Public Law 98-577) addressed many of the issues contained in H.R. 2133 including: (1) the sole sourcing of contract requirements; (2) mandatory regulations regarding the acquisition of spare parts; (3) contractor "prequalification"; (4) the SBA Certificate of Competency Program; and (5) the small business subcontracting program. For a more detailed discussion of P.L. 98-577 *see* Chapter 4, *Committee Legislation Enacted.*

SMALL BUSINESS ACT AUTHORIZATIONS AND AMENDMENTS (H.R. 3020) HOUSE REPORT 98-182

The Committee reported H.R. 3020 to the House of Representatives on May 16, 1983 (House Report 98-182), excerpts of which are as follows.

The Purpose of the Bill

The Committee's bill, H.R. 3020, is primarily small business job creation legislation and the necessary legislative rewrite of the Small Business Administration fiscal year 1984 and 1985 authorizations to support this initiative. It also remedies certain inequities which recently, over the strong objections of your Committee and, indeed, the entire Congress, have been forced upon small and minority business. This bill is premised on the Committee's belief that small business can and should lead the way in any turnaround in our economy. Small business is clearly our best single source of job creation. By far, most new jobs are provided by small businesses employing fewer than five hundred employees. Further, at a time when our Nation appears to be moving back toward economic health, that job creation small business contribution to an economic recovery must be recognized and supported. To accomplish these initiatives, the bill restructures SBA programs such as Direct and Guaranteed Business Lending, Pollution Control Financing, Surety Bond Guarantees, Export Assistance to Small Businesses, Minority Small Business Capital Ownership Development and the Development Company Program to make them go further and directs assistance to small concerns where it is needed most.

H.R. 3020 reaffirms the Committee's interest in the enactment of H.R. 860 (H.R. 6086 as passed the 97th Congress). Carried forward from that legislation are: a requirement that SBA fully utilize its program levels a prohibition against SBA's refusing to issue guarantees on pollution bonds simply because the project involves Industrial Revenue Bonds; a prohibition against SBA's arbitrarily refusing to approve surety bond guarantees on contracts eligible under statutory provisions; and a requirement that SBA follow the Administrative Procedure Act if it revises its regulations.

In accord with the Committee's decision to channel the limited amount of direct loans to areas of high unemployment and to make such loans subject to certain participation requirements, SBA's direct loan program has been extensively modified to meet criti-

cism of the program default rate, and uniformity in application of labor surplus area procurements has been provided.

The bill codifies the current generally adhered-to practice of SBA's notifying the Small Business Committee before reprogramming any program levels, and requires notification to the Committee before implementing any reorganization. The bill clarifies the status of questions which have arisen concerning administrative restrictions on funding which SBA provides for its Development Company and Minority Small Business Investment Company Programs.

Finally, the Committee has responded to the continuing dissatisfaction of Members and the small business community with a problem created by changes in the Act made during 1981 Reconciliation which created unforeseen problems in the administration of the Federal Government's response to disasters. The bill would reinstate the Small Business Administration's economic disaster loan assistance program and would restructure the SBA's physical disaster loan assistance to provide homeowners and small business owners with more realistic help when they need it most.

Introduction and Background

Chairman Mitchell introduced H.R. 2132, H.R. 860, H.R. 863 and H.R. 2583, which form the basis for the great majority of this bill's provisions. Hearings were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on H.R. 2132 and H.R. 860 and other pending legislation which examined SBA authorizations, job creation and training legislation and necessary program changes on April 11 in Raleigh, North Carolina and on April 21, and 27, 1983 in Washington, D.C. Administration and private sector witnesses were heard.

The Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, held on April 19 and 20, 1983, in Washington, D.C. hearings on H.R. 863, a bill to amend SBA's Capital Ownership Development Program, which assists small business concerns owned by disadvantaged individuals by providing management, financial and marketing assistance as may be necessary to promote their competitive viability within a reasonable period of time. That bill would establish new criteria for program retention based upon the progress a firm has made to become competitive.

Also forwarded from the Subcommittee markup as amended were H.R. 403, by Mr. Smith of Iowa, which modifies certain SBA program authorities and establishes an SBA equity purchase program.

After hearings on May 3, 1983 on disaster assistance, legislation rewriting the SBA physical disaster assistance programs for homeowners and businesses was, on May 4, marked-up and forwarded, as amended, to the full Committee: H.R. 2583 by Mr. Mitchell, H.R. 1375 by Mrs. Boxer, H.R. 1779 by Mr. Gejdenson and H.R. 592 by Mr. Gore. As considered at that hearing of May 3 and marked-up on May 4, legislation to re-establish SBA's economic dislocation disaster loan assistance was forwarded, as amended, to the full Committee: H.R. 620 by Mr. Kazen, H.R. 1593 by Mr. Bates, H.R. 1929 by Mr. Udall, and H.R. 2317 by Mr. de la Garza.

H.R. 860 as introduced by Chairman Mitchell is basically the reintroduction of H.R. 6086, the Chairman's bill as passed the House in the 97th Congress. Hearings on H.R. 6086 and other pending legislation had been held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on April 28 and 29, 1982, at which the SBA Administrator and private sector witnesses testified. In subsequent action on May 12, 1982, the full Committee ordered H.R. 6086 as amended, reported to the House by a vote of 38 to 0. H.R. 6086 passed the House on June 8, 1982.

Marked-up pending legislation, as amended, was reported from your Committee's Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems as a Committee print of an omnibus bill by voice vote of those present at the Subcommittee meeting held on May 4, 1983, the full Committee marked up this print on May 10, 1983, adopting a series of amendments on authorizations offered en bloc by the minority and a number of specific program amendments. The Committee in subsequent action on May 10 unanimously agreed to report the measure, as a clean bill, to the House.

This omnibus legislation involves matters of paramount importance to the Committee on Small Business, the Congress and the small business community. The members of the Committee were spurred by concern over the first quarter unemployment statistics which show nearly 16 million Americans are out of work. This is 15 percent of the civilian labor force and includes discouraged workers and other job seekers. The picture is not bright. Business failures in the first quarter of 1983 set a post World War II record. There were 7,312 failures in the first quarter of 1983 compared to 2,535 for the same period in 1980 and 5,707 failures for the first quarter in 1982. More businesses have failed in the first twenty-seven months of this Administration than in the previous five years.

At the same time, the Committee was mindful of business births during this time period. During this same time period, at least 245,000 businesses were created. These businesses have significant job creation potential that must be nurtured.

The recent public relations material, compiled at the express direction of Congress, and released by the SBA, on the State of Small Business, said that small businesses have weathered the recession better than big businesses. Some small businesses did well, particularly those in services, finance, and insurance where over 500,000 new jobs were created between July 1982 and December 1982. However, other sectors of the small business community have suffered greatly. In construction and wholesale and retail trade over 600,000 jobs were lost. However, in every line of business except construction, small business lost fewer employers by percentage or gained more (finance and services) by percentage than large business.

Taken together your Committee believes that this information not only supports but requires the Congress to be more concerned for the health of the small business sector of our economy. This data make clear the crucial role small businesses can and do play in our economy.

These new businesses mean jobs for our unemployed and revenues for the Treasury but only if they grow. The Committee is con-

cerned that small businesses are still facing extremely high real short-term interest rates. Small business have historically paid interest rates about 3 to 4 percentage points above inflation. They are now paying rates 7 to 10 percentage points above inflation. These rates are far too high to allow many small businesses to make the strong comeback necessary to economic recovery, yet our Nation desperately needs their collective help. Minority and small businesses—the primary sources of jobs—can lead the way in human capital development and revitalize America if provided the chance to create jobs and survive the recession economy.

Toward this goal, your Committee has fashioned changes to and new emphasis for the SBA programs. The direct loan program has been altered dramatically to improve program performance; scarce resources have been targeted to the areas of greatest need and extended by requiring a match of funds; and successful local and State Federal partnership programs have been encouraged.

The Committee believes that it is small businesses that create the jobs—private sector, long term, self-sustaining jobs. The Committee believes this Nation needs these jobs and these businesses and has moved expeditiously to create an environment where small businesses can thrive.

Authorization and Needed Program Changes

Recommended authorizations for fiscal years 1984 and 1985

Prior to October 1, 1977, the Small Business Act authorized the appropriation of such sums as were necessary to carry out the provisions and purposes of the Act; and the Small Business Investment Act authorized the appropriation of specific cumulative dollar amounts to carry out the programs authorized by that Act. Effective Ocotber 1, 1977, open-ended authorizations for programs and payment of salaries and expenses were sharply curtailed. Public Law 95–89 amended the Small Business Act to specifically authorize the dollar amount of program levels for fiscal years 1978 and 1979; to authorize the appropriation of the dollar amount needed to carry out the program levels specified; and to authorize the appropriation of amounts necessary to carry out Small Business Act programs for which specific dollar authorizations are not provided. The Small Business Committee has determined, after substantial experience, that multi-year authorizations for the Small Business Administration are absolutely necessary. Such authorizations give Congress, the Executive, and the small business community a clear indications of goals and priorities for a reasonable period of time and permit the Administration to know authorizing provisions prior to developing the budget proposals.

The Committee's hearings in this and the past Congress have shown that the administration's efforts to reduce drastically loan and other programs of the Small Business Administration have gone too far. Small and medium-sized firms continually need large amounts of credit to participate in the projected economic recovery and the country needs the thousands of new jobs these businesses will generate. Too often, the Committee has found that in areas of greatest need, some banks are far too interested in providing debt

capital to large projects in high-growth areas. Although banks have a duty to their depositors and shareholders, they often neglect the small business community that surrounds them. This phenomenon, coupled with the major and continuing outflow of debt funds to foreign loans of questionable value, adversely affect small businesses which are unable to find another source of funding.

The Committee is in agreement that deficits must be controlled and reduced. However, the Committee also believes that by holding SBA loan programs, in the main, at 1983 levels the small business community would be better served than by making further cuts. The Committee cannot agree to the continued OMB policy of deferral and regulatory fiat it has forced upon the SBA. We believe that recent unanimous rejection of such policies by the House further reinforces this position. As an example of the Committee's firm view of this OBM approach, the Committee has prohibited SBA from bowing to this sort of unreasoned cost cutting by removing its authority to limit the surety bond program by arbitrary and restrictive rules. These rules, dropped when demand showed no need for cost cutting were not motivated by sound management and created very real problems in the construction industry.

The Committee has acted to insure that this area, dominated by small business, will have the wherewithal to expand with the recovery, receive its fair share of the road and bridge construction funds recently appropriated and created the jobs so desperately needed.

The unanimous decision of the Committee to prohibit OMB from mindlessly restricting SBA's use of pollution control guarantee funds is another example of the committees intent to provide an opportuntiy for small businesses to grow and help the economy to grow.

The Administration's policy which has reduced the number and dollar volume of SBA's direct and guaranteed loans by approximately 50 percent from 1981 levels must be modified to provide capital for small business.

Under our tax law, companies are authorized to issue bonds whose proceeds are used the finance pollution control equipment mandated by law. These bonds are very attractive to companies which need such financing as they can be structured as tax exempt and thus carry a lower interest rate. Small business, however, although technically eligible to particpate in this program is effectively precluded for a myriad of reasons. This inability was corrected by Congress when it established a pollution control contract guarantees program.

But the administration proposed to cut $110 million from the congressionally approved 1983 program level of $250 million. This was completely unacceptable and the House vetoed this proposal.

This program is a very valuable one for small business. In return for the SBA guarantee, the small business must pay a fee. These fees have been sufficient to assure that SBA has always made a profit on this program, now about $10 million per year. The OMB action which prohibits an SBA guarantee on a bond involved in a project which includes a State tax-exempt bond prevents small businesses' use of the lowest available cost funds for the construction of Government mandated nonproductive facilities.

Another serious question of continuing interest to the Committee has been the peso devaluation crisis and its effects on the small business owners adversely affected by continuing difficulties in the Mexican economy and border commerce and the need to reinstate this program abolished by Gramm-Latta.

The Committee has held hearings on this subject, in Washington and in San Diego, California. Also the staff conducted extensive interviews with local public officials and small business owners in numerous communities along the Mexican border in both Texas and California

The Gramm-Latta limits on response to physical disaster assistance to homeowners and businesses and have not met the test according to extensive testimony from four Committee hearings, both in Washington and in the field.

Reauthorization Rationale and Needed Program Changes

In addition to the necessary reauthorization process, the Committee is making certain program changes in the Small Business Act and the Small Business Investment Act of 1958.

Recently, the Committee has been aware of substantial criticism of the direct loan program. Some have argued that the high rate of past due loans, the small amount of funds and the substantial amount of paperwork necessary for these loans indicates that they should be abolished. The Committee carefully has followed SBA's attempt in the past several years to improve the quality of direct loans, but some would argue that the loss rate is still too high when compared to losses under the guarantee programs.

To make the changes necessary to reduce losses in this area and make the available funds to go further, the Committee has decided to write a statutory requirement that an applicant for an immediate participation loan (i.e., general business, equal opportunity or energy) must provide an additional injection of funds.

The amount of the injection required is dependent upon the size of the requested immediate participation loan. If the loan is under $100,000 in amount, at least an additional 10 percent of the funds is required; if the loan is between $100,000 and $200,000, at least 20 percent; and if over $200,000, at least 30 percent. However, in order to encourage the participation of State and local governments or other development entities providing loans at less-than-market rate interest in the larger dollar size loans, the bill provides, for loans over $100,000, that if the outside contribution is from a State or local government or other development entity providing less than market rate loans, the amount of the injection need only be one-half of what would otherwise be required.

This additional injection, when derived from a local credit source, will provide a local lender judgment that will substantially reduce the work of the SBA. But further, this local injection will bring with it a local commitment to the small business that the far off SBA district office cannot provide.

Last, because these funds are indeed scarce, the Committee believes that the matching provisions will have the beneficial effect of making these funds go further by making more money available than would ordinarily be possible under a direct loan program.

By abolishing direct loans, except for handicapped loans, the Committee does not intend to signal its agreement with those who argue that the fund is so small as to be useless. Certainly the Committee does not urge that the fund be expanded to the size of the $1.4 million direct loan program at the Department of Agriculture that makes direct loans available to the Nation's two million farmers. Rather the Committee believes that this SBA fund of $300 million, when used in conjunction with private, State and local development efforts, will go a long way toward helping the most needy of America's 16.8 million small businesses and help to prevent further budget deficits.

The Committee also has added an additional feature to make the impact of this small fund more significant. In keeping with the employment legislation passed this year, these funds are targeted for job creation in the areas of greatest need. Utilizing that formula to better aim these funds, these participating loans are divided among the SBA district offices based upon the ratio of unemployed in each district as compared to the national unemployment total. During the last month of each quarter the restricted equal opportunity loan funds will be available to any otherwise qualifying borrower if labor surplus area based business demands have not used up this fund. In this way the Committee has targeted those most in need while not excluding other small business owners who can also create jobs.

By adopting this provision it is the intent of your Committee to channel job-creating, participating loan funds to those areas most in need. Since the new allocation formula is based on quarterly statistics, it is believed that sufficient flexibility exists to respond rapidly to changing economic conditions. Further, the passage of this provision will automatically insure that each State will receive its fair proportion of a scarce resource.

Direct Handicapped Assistance Loan

The Handicapped Assistance Loan (HAL) program authorized by Section 7(a)(10) of the Small Business Act has been vital to Goodwill and other organizations employing or owned by disabled individuals. These loans are available up to a $350,000 limit under two classifications.

HAL-1 loans are available to nonprofit organizations employing handicapped individuals for not less than 75 percent of the manhours required for the production of commodities or in the provision of services. HAL-2 loans are only available to small businesses wholly owned by handicapped individuals. In addition to direct loans under the program, the SBA may guarantee loans made by a private lending institution to organizations employing or owned by disabled persons.

In many ways, Goodwills are small businesses and face all the problems that both small businesses and nonprofit organizations are experiencing. Yet, at the same time, Goodwills operate to fulfill the important social purpose of enabling disabled individuals to lead full and productive lives. Without the assistance of the HAL money, many Goodwills would not survive and the resulting loss of jobs for disabled people would result in costs to the taxpayers sig-

nificantly higher than the Federal expenditures for the loans. Additionally, it should be noted that unemployment among disabled Americans is as high as 50 percent. The survival of Goodwills, capable of employing these individuals, is extremely important today.

The HAL program is an investment in the potential of disabled Americans who otherwise would not have found employment. This investment is returned many times over through the increase in earnings of disabled persons and the reduction in the cost to the Government of supplemental payments and benefits.

Direct Economic Opportunity Loans and Program Criteria

Pursuant to section 7(a)(11) of the Small Business Act, SBA is empowered to make or guarantee loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or which are owned by low-income individuals. These loans, commonly referred to as Economic Opportunity Loans (EOL's), have the same terms, maturities and restrictions on the use of proceeds as SBA's regular business loans.

SBA's conduct of this program under the present administration has been erratic and incoherent. The Administration requested an EOL guarantee program level of $100 million in fiscal year 1982 and $176 million in each of fiscal years 1983 and 1984. The program level has been set for EOL guarantees at $60 million in each of the three aforementioned years.

Last Congress, the Committee failed to understand the rationale supporting the Administration's proposal. During the first six months of fiscal year 1982, only $4,378,000 of EOL guarantees were made. This is an annualized rate of less than $9 million, and the Administration's request was to increase this program level to $100 million for that year. Further, since the inception of the EOL program, it has never generated more than $25 million in activity during any one fiscal year, and yet your Committee was requested to increase this program level to $167 million in each of the next two years. EOL guarantee loan activity for fiscal year 1982 was $14 million; thus far for fiscal year 1983 it is $16.7 million.

SBA announced that it was about to undertake a new effort "with our regional administrators, with our banking partners and all involved in the system to improve our record in this area." Loan experience to date, however, has not shown any of the projected increase which was supposed to result from this effort. The Committee is constrained to reevaluate the EOL program levels for succeeding years.

The omnibus Small Business Act amendments of the last Congress, H.R. 2998, as reported by this Committee, were made a part of the Gramm-Latta reconciliation measure which became Public Law 97-35. Contained therein was the Administration requested business loan consolidation provision which consolidated the former EOL provisions found in section 7(i) of the Act into a single 7(a) program. By that change, the former EOL lending guidelines as carried forward were not sufficiently emphasized.

Section 7(a)(6) of the Small Business Act requires that all 7(a) loans shall be of such sound value or so secured as reasonably to assure repayment. An exception to this rule is provided, e.g., in the

case of loans to the handicapped, which allow any reasonable doubt about ability to repay to be resolved in favor of the applicant. The Committee again would apply this exception to small businesses that receive equal opportunity loans.

This change would soften slightly loan criteria for EOL type applicants separating them from general 7(a) criteria. The SBA has testified that this provision, responsibly administered, would not adversely affect the Agency's quality loan direction.

Optional Loan Repayment Plan and Interest Rate Revision

Many small business concerns find it extremely difficult to service debt in the initial term of the loan. During this period of time, markets and products are both in a stage of development and, therefore, such a firm's cash flow is at a relatively low level. Moreover, because of high inflation and high interest rates many small business concerns cannot afford the cost of borrowing funds.

Small businesses need help to obtain debt financing at an initial cost which is reasonable and will allow the firm to increase its loan payments, over time, as its ability to generate cash increases. This concept is similar to the graduated payment mortgages now commonly in use to spur the housing industry. However, the Committee does not believe that SBA should subsidize interest rates, but instead the agency should be authorized to approve loans where interest only payments are required in the initial years of the term.

Participating lenders would need an incentive for arranging the loan repayment schedule in this manner, but such incentive need not be paid for by the SBA. A similar need for interest-only loans exists when SBA makes the loan directly. The Committee will require that SBA report in February of 1984 and 1985 on these initiatives to assure Congress will be able to monitor this action closely; the interest only provision is also subject to a two-year sunset.

The Committee also is acting to eliminate the administrative add-on provision which places the interest rate on SBA direct loans an additional 1 percent above the cost of money to the Government. SBA expenses are otherwise authorized and appropriated. There is no reason to continue any additional charge to the hard-pressed small business borrower.

Guaranteed Loan Maximum Amount

SBA may guarantee up to 90 percent or $500,000, which is lesser, of a commercial loan by a participating financial institution to a small firm. By regulation, the maximum interest rate on guaranteed loans is 2¾ percent above the prime interest rate on loans with maturities of 7 years or more and 2¼ percent above the prime for loans with maturities of less than 7 years. SBA business loans may be for as long as 25 years.

Under present law, the maximum amount of a loan that SBA may guarantee is $500,000. This amount was fixed by Public Law 94-305 (June 4, 1975). In view of recent high inflation rates and the Administration's recommendation, the Committee has determined to raise the $500,000 ceiling. Loans made at the new $750,000 maximum should be few, based on the average size of SBA business loans ($127,000). Indications are that even at the $750,000 limit,

SBA will not increase pressures on limited budget authority, but will provide an emphasis on participation loans requiring the larger amounts of non-Federal funds.

Small Business Investment Company Program

Congress created the Small Investment Company (SBIC) program in 1958. SBIC's are investment firms licensed and regulated by the Small Business Administration. They provide equity capital, long-term loans and management assistance to new and growing small business concerns. SBIC's are privately-organized, privately-capitalized and privately-managed.

Over the past twenty-four years, SBIC's have been authorized to obtain money for the Federal cost of borrowing funds. They then add five or six percentage points to the cost-of-money and make it available either in the form of long-term debt or long-term debt accompanied by warrants which entitles them to a share of the small business being financed, or possibly by simply acquiring up to one-half of the ownership of the business being helped.

At the present time there is approximately $1 billion in assistance to SBIC's outstanding. In exchange for this Federal money, the SBIC's have some $1.3 billion in assistance to small businesses which is also outstanding. Thus, the Federal Government realizes almost a one-third increase in the financial assistance being provided to the small business community by channeling its funds through the SBIC industry rather than channeling it directly through small businesses.

Minority Enterprise Small Business Investment Companies (MESBIC's)

Minority Enterprise Small Business Investment Companies (MESBIC's) and SBIC's which specialize in providing equity funds, long-term loans, and management assistance to small business concerns owned by socially or economically disadvantaged persons. MESBIC's are governed by the small regulation as SBIC's, with some modifications.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Under the Small Business Investment Act of 1958, MESBIC's are eligible for up to four tiers of leveraging from the SBA on their invested private capital. This private/public sector partnership serves to maximize the pool of funds available for investment in the minority small business community.

Because 1974 and 1982, the MESBIC industry invested over $260 million in 4,274 minority businesses. The jobs created or maintained by those investments in the latter half of that period alone totalled over 52,000. In 1982, MESBIC's invested $46.2 million in 750 businesses, drawing an additional $93 million to minority business investments from other private sector sources. Increasing the authorization for MESBIC's in fiscal years 1984 and 1985 is an important statement of support for the MESBIC industry and stresses

the Committee's belief in the importance of policy continuity regarding the industry.

In recent years, the industry has faced a variety of problems with availability and access to leverage. For example, in 1979, there was an extreme shortage of leverage dollars and many prospective business opportunities were not able to be funded. In 1980, after considerable agony, the industry appropriation was increased and MESBIC's across the country were able to draw down needed funds from the SBA. In 1981, the MESBIC industry was put in the position of being totally stricken from the budget. It took months of hard work and strenuous effort by the industry to re-install the program funds to the budget. The Administration has recommended an increased level of funds for the MESBIC program for fiscal year 1983. Congress agrees with that recommendation. The point with this recitation of history is that the industry is on a veritable roller coaster from year to year. MESBIC's make long term investment decisions, and in order for the industry to continue developing long term investment strategies and seek out additional private capital, there must be continuity and an understanding of the public sector's role in the total equation. The partnership concept can only function efficiently if the public sector partner realizes that the leveraging of funds must be accomplished in a timely and business-like manner. The increased efficiency will allow MESBIC's the opportunity to make increased job creating investments in a wide variety of industries.

Spending Levels

The Committee's statement on authorization for SBA programs details the present approach which the Committee believes provides more certainty in a way small business assistance is administered, coupled with effective oversight. The Committee continues to believe that multi-year authorizations are the proper approach, giving Congress, the Executive, and the small business community a clear indication of goals and priorities for a reasonable period of time. The Committee believes that this budgeting method is the only way to assure that the congressional intent in the Small Business Act will be strictly adhered to by SBA.

Unfortunately, specific program authorization levels and appropriations may not alone provide assurance that congressionally-mandated objectives will be met. Specifically, the agency (sometimes at OMB's direction) has over this period adopted a series of administrative actions purposefully designed to lessen the demand for its programs below levels approved by Congress and the President.

Another uncertainty is the commitment of SBA to use the full amount of the guaranteed lending authority available through the Congressional authorization and appropriation process. Under existing law the statute specifies the maximum amount of loans and guarantee assistance which may be made available but does not require any minimum.

The uncertainty remains that SBA, by regulation, could reduce the ceilings on interest rates, on its guaranteed loans as it has proposed in the past.

Although this proposal was not implemented, such action could result in the majority of banks refusing to participate in the program.

Other examples of the Committee's concern would include the same sort of action which SBA recently took to curtail the surety bond guaranty program and the pollution control guarantees program. However, this legislation addresses these directly.

In summary, action is necessary to require SBA to refrain from administrative action which would make unavailable the amount made available by law and agreed to by the President and the Congress unless there is a lack of qualified applicants for assistance.

MESBIC Financing

Under the Small Business Investment Act of 1958, as amended, MESBIC's can receive up to four tiers of SBA leveraging on their "private capital." In an effort to promote the MESBIC industry, in its regulations the SBA allows for the inclusion of "nonprivate funds" in its interpretation of private capital for leveraging purposes.

Based on this provision over several years, public funds, accompanied by large amounts of private capital, were being invested in the MESBIC industry. These private funds were largely dependent for their effectiveness on the leverageability of the public funds they complemented. By mid 1980, over $17 million in Government funds, in concert with over $10 million in private capital, had been invested in the MESBIC industry as a result of regulation allowing leveraging against public funds.

In July 1980, public funds leveraging was suddenly halted by a decision of the Comptroller General. The decision claimed the leveraging of MESBIC's Federal funds to be illegal, except in the case of specific statutory language to the contrary. This decision was challenged and confirmed by a later Comptroller General's decision in January 1981. Thus the potential utility of over $100 million targeted to the small business sector has been jeopardized.

Therefore, for those MESBIC's which prior to the GAO ruling had relied upon the use of public funds, legislation is necessary to clarify that the words "private capital," as used in section 303(c)(2)(iii) of the Small Business Investment Act of 1958, include not only capital which has been raised from private individuals, partnerships or corporations, but also, for purposes of leveraging, non-private or public funds such as funds received from the Department of Housing and Urban Development, the Economic Development Administration, the Federal Railroad Administration of the Department of Transportation, and the Community Services Administration among others. This clarification is a one-time change and applies only to those MESBIC's which relied to their detriment on earlier policy.

Pollution Control Financing

Congress recognizes that small businesses, because of their generally limited credit history and the smaller size of their financing requirements, often are unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and *nonpro-*

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ductive nature of *required* pollution control facilities are often more than small businesses can be expected to handle. Therefore, Congress authorized SBA, commercial banks and State authorities to make long-term, low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guarantee of the small concern's obligation under a contract involving the facility.

Through the program, small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite Congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantees for tax-exempts.

The SBA Pollution Control Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses, thereby enabling them to comply with environmental requirements.

The restoration of the guarantees contemplated by the provisions of this legislation is more critical now than at any time since those guarantees were authorized in 1976. The needs of small businesses and the communities in which they produce and serve for installing pollution abatement facilities and equipment and for disposing of wastes have continued, and the advent of a more targeted national focus on the control of toxic and hazardous wastes and substances since the original enactment of this program indicates that those needs may increase.

From the date this prohibition was put in force, approximately fifteen months, only five of the original 100-plus applicants were able to proceed with some form of taxable financing guarantee. That reality has had no impact with the Administration in persuading it that its policy is wrong.

Since its inception, this SBA Guarantee Program has been a revenue raiser through the fee SBA levies on businesses using the guarantee; it is self-sustaining and fosters economic activity throughout the country.

Unfortunately, the SBA and OMB have refused congressional directives to heed that tax-exempt pollution contract guarantees are of vital importance to the survival of small businesses. It is important to note that in may instances the small concern's net worth is exceeded by the costs of these pollution control facilities. A business that does not have the assets to use as collateral for a taxable loan will have to close its doors or be in non-compliance with environmental mandates. These alternatives are unacceptable. There-

fore, the Committee must legislatively correct the misunderstanding of the purposes of the program.

Surety Bond Guarantees

To restore certainty and continuity to another SBA program, the Committee is also forced to express its disapproval of the recent regulatory action whereby SBA reduced the maximum allowable amount of guarantees made through its surety bond guarantee program.

Although the statutory maximum for such guarantee is $1 million, SBA on January 15 administratively lowered this limit to $250,000 or 125 percent of any previously guaranteed contract, whichever is less. This action was done without prior notice to or consultation with the Congress and has been defended by the agency as part of the administration's efforts to lower overall Federal guarantee activity.

During fiscal year 1982, Congress had approved a $1.2 billion program level for surety bond guarantees. The administration had requested that this be lowered to $1.08 billion, which is the same amount SBA proposed for fiscal years 1983 and 1984. Congress rejected the administration's request. As a preliminary step in the fiscal year 1984 budget process, the Committee recommended to the Budget Committee that sufficient guarantee authority be provided for a $1.6 billion program, the level set for the fiscal year 1984 and 1985 authorizations in this legislation. This program is particularly important to small minority contractors who need such bonds in order to be eligible to bid on the multi-billion dollar set aside in the highway gas tax bill (P.L. 97-424).

SBA's restrictions on the size of surety bond guarantees will create a hardship for many small contractors. The Committee, in addition to authorizing a program level sufficient to make such restrictions unnecessary, has determined further legislative action is necessary to avoid further uncertainty. This must be done despite the fact that on April 1, SBA eliminated the $250,000 cap and increased the percentage limitation from 125 percent to 200 percent.

Action is being taken to expressly prohibit SBA from limiting the maximum amount of a bond below the statutory limit and from utilizing a percentage increase limitation on surety bonding; that action does not, however, preclude SBA from evaluating each application on its merits and approving guarantees in lower amounts where the individual application should receive such treatment.

Small Business Committee Notification

In furtherance of the Committee's oversight responsibilities under Rule X of the House of Representatives and in the interest of SBA program certainty and continuity, two procedural steps need to be implemented.

With respect to reprogramming requests that are deemed to be necessary, the Committee expects to follow closely the reprogramming procedures here outlined.

The Chairman of the Appropriations Subcommittee on the Department of State, Justice, and Commerce, the Judiciary, and Related Agencies, in addition to the Chairman of the House and

Senate Small Business Committees will be notified in writing a minimum of 15 days prior to—

(1) Reprogramming of funds, whether permanent or temporary, in excess of $250,000 or 10 percent, whichever is less, between programs or activities. This provision is also applicable in cases where several activities are involved with each receiving less than $250,000. In addition, notification of reprogramming actions which are less than these amounts is expected if such actions would have the effect of committing the agency to significant requirements in future years.

(2) Creation of new programs or substantial augmentation of existing programs.

(3) Relocation of offices or a substantial number of employees.

(4) Reorganization of offices, programs, or activities.

The Committee also expects that any items which are subject to interpretation will be reported.

Second, the Committee desires to be kept abreast of any agency internal reorganization as has been past practice and also any overall executive branch reorganization which would affect the Small Business Administration.

Labor Surplus Area Procurement

Under section 15 of the Small Business Act qualified small business concerns participate in their fair share of contracts for goods and services from the Federal Government.

The Committee continues to be concerned regarding maintenance of this fair share and that procurement dollars be used in a manner best calculated to yield the highest possible return to the taxpayer. In order to achieve this purpose, it is necessary that procurement funds where feasible be positively correlated with job creating potential and, that opportunities for economic stimulus as measured by the number of unemployed be maintained.

Small businesses create more of the net new jobs than large firms do. This impact is even higher in areas of economic distress, small concerns can provide as much as 80 percent of net new jobs. This bill reinforces Committee action which directs all Federal agencies to target contracts and small business set-asides to firms in or near areas of high unemployment according to a hierarchy of need, with small businesses in labor surplus areas at the top of the list. It also would direct agencies to encourage the award of subcontracts by the same targeting criteria.

Also section 15 of the Small Business Act contains a number of technical errors which could be a potential source of confusion for program administrators. Because of legislation passed subsequent in time to section 15, there is a question regarding the applicability of its provision to all agencies of the Federal Government. There is a clear need, therefore, both to cure the technical deficiencies contained in present law and to dispel any ambiguity regarding the scope of this section's applicability.

Development Company Working Capital

At the present time small businesses cannot obtain working capital through development companies. This means they must go elsewhere or go through a perpetual squeeze on capital. The inclusion of working capital in 503 funded projects will meet the critical need for "expansion" capital.

Each fixed asset expansion of a business demands more inventory, more accounts receivable, and a larger payroll. Prudent lending principles require consideration of these items. To exclude them from this program creates unnecessary obstacles.

The Committee recognizes that all small businesses need working capital and that a development company, with its full time professional employees, should be able to serve as a one-stop financial center.

Providing working capital makes the small business loan package more workable and makes the capital asset loan supplies by the development company more secure.

Source of Development Company Funds

When Congress established the 503 Development Company Program in Public Law 96-302 certain requirements were set for program eligibility. To qualify for this program, a development company must have: (1) A full-time professional staff with capability to package, process, close and service its loans; (2) Professional management ability, including adequate accounting, legal and business-servicing abilities; (3) A board of directors or membership, which meets on a regular basis to make management decisions for the company including decision relating to the making and servicing of loans by such company.

Income received by the development company through its assistance to small businesses cannot exceed that necessary to repay with interest the debenture it issues, to pay taxes and insurance and to recover administrative costs.

There are 534 Certified Development Companies in all 50 States. Statistics show 3,650 development company loan approvals, totaling $731.1 million since the beginning of the program which, at 40 percent of project cost represents more than $1.825 billion of investment in growing profitable small businesses. This is a large contribution to what the economy needs most of all, capital investment by growing profitable small and medium sized businesses.

The Committee recognizes the differences in funding provided through 503 type projects, projects funded by the SBIC program, and projects funded in the private venture capital business.

Venture capital opportunities are the cream of the crop. These are mostly high-tech start-up businesses. There are a relatively very few potential investments in number; but are very high potential gains for investors. They are very risky but also potentially very profitable. This sector is the domain of totally private venture capitalists.

Risk capital investments represent a greater variety of projects that are in part financed by small business investment companies, banks and other sources of investment. These projects typically are

expansion and start-ups and are not as risky as venture capital projects.

The third and by far the largest group of investments, is labeled expansion financing. This is the domain of the 503 program. These are the existing businesses that do not have prospects for the extraordinary growth necessary to interest venture capitalists. Also most SBICs are not interested in long-term, fixed asset financing.

Many small businesses do not benefit from the venture capital industry or even SBICs. There are existing businesses seeking capital for expansion. The 503 program can help this far greater number of businesses however, evidenced by its widespread application and rapid growth in communities across the country. The Committee recognizes the importance of the 503 program to a large number of small businesses and the most important issue now facing us, the creation of permanent private sector jobs.

These requirements resulted in a greater commitment of development companies to the small business community.

By statute, guarantees on behalf of development companies under section 503 may be used to provide funding only for up to one-half of project cost. SBA has chosen to refuse guarantees if the non-SBA half is partially or wholly funded by Industrial Revenue Bonds. This arbitrarily frustrates Congress' attempt to provide desperately needed capital to small concerns.

The intent of Congress was expressed in the conference report accompanying Public Law 96-302, which established the section 503 program, wherein it was clearly stated that SBA should not disapprove the guarantee of any debenture or any loan made with the proceeds of a debenture issue, solely because the proceeds would be used in a project whose other sources of financing include, or are collateralized by tax-exempt industrial revenue or development bonds. Until changed by OMB, SBA policy had been to participate in projects whose other sources of financing include or are collateralized by tax-exempt obligations. Further, loans made with the proceeds of 503 debentures were subordinated to such obligations.

The Congress was forced to act to reinstate its temporary intentions in the recent $4.6 billion "Jobs Bill", P.L. 98-8 signed into law on March 24, 1983. That bill provided two critically important elements for the 503 program: (1) $100 million in new guarantee authority for fiscal year 1983, and (2) language which expressly permits the proceeds of 503 debentures to be subordinated to tax-exempt bonds.

It is necessary to amend the Small Business Investment Act of 1958 to prohibit SBA from using the source or nature of the other funds as a criteria for eligibility.

Procurement From Handicapped Organizations

Section 15(c) of the Small Business Act allows organizations eligible to receive Handicapped Assistance Loans under the Act to bid on small business set-aside contracts. Three conditions are imposed: (1) the eligibility is limited to fiscal years 1981, 1982 and 1983; (2) a $100 million cap is placed on the amount of contracts that could be awarded in each of the three years; and (3) in the event of a com-

plaint of adverse impact on a small business, the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and the Administrator of SBA must act to resolve the dispute.

Section 116(c)(2) of Public Law 96-302 required SBA by January 1, 1982, to submit to Congress a report on the impact of workshop participation in the set-aside program on for-profit, small businesses. The report determined: the $100 million limit appeared to be an adequate ceiling; a total dollar value of only $723,000 in contracts has been reported to SBA; an absence of complaints from small businesses; and no measurable economic injury to for-profit small businesses.

According to informal records kept by the National Industries for the Severely Handicapped, the aggregate amount of small business contracts successfully bid by workshops has been less than $6 million over the 2½-year period of the program.

Given the continuing small volume of contracts awarded to workshops, lack of documented complaints and the conclusions reached by the Small Business Administration, reauthorizing organizations eligible for HAL loans to bid on Federal contracts set aside for small businesses for another term is warranted.

The Committee, however, intends that yearly reports be reinstituted in order that any adverse effects will be readily apparent.

Size Standards and Publication of Timely Regulations

Congress established a broad definition of small business in the Small Business Act of 1953: "a small-business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition may use these criteria, among others: Numbers of employees and dollar volume of business. . ."

Establishing "size standards," i.e., the precise specification of "small," is delegated to the Administrator of the SBA. The size standards determine a company's eligibility for SBA assistance, usually in the form of direct or guaranteed loans; management or technical assistance; or special set-aside programs for minorities, the handicapped or other economically disadvantaged entrepreneurs.

The existing standards have often been criticized as confusing and lacking a comprehensive, underlying logic. The complex rules often leave a business qualifying for some programs, but not others, because eligibility may vary from one program to another.

Changes to the size standards have been the center of controversy since 1979, when SBA officials decided the hodge-podge of rules needed revamping. If accomplished, the revisions will be the first major changes since the 1950's.

In March 1980, SBA proposed a revision to its size standards which was made inoperative by Public Law 96-481 which prohibited any size standard change until March 31, 1981.

In March 1980 proposed rulemaking SBA officials decided to use a single measurement of size the number of employees—with limits differing by industry—based on an assessment of competition.

Throughout this revision procedure SBA has maintained that promulgation of rules and regulations regarding size standards is not mandatory under the Administrative Procedure Act. But they have voluntarily brought themselves under the Act by regulation. However, the safeguard is needed that any size standard changes be in accordance with the Administrative Procedure Act.

The next proposal was published on May 3, 1982, as a "Second Advance Notice of Proposed Rulemaking." The latest in this series of proposed size standard revisions spanning the last three years was published for comment on May 6, 1983.

IMPLEMENTATION OF STATUTES

The Committee wants to make sure that SBA continues to follow the APA in setting new size standards, i.e., publishing the notice of proposed rulemaking for extensive public comment. Full public participation and congressional scrutiny would thereby be assured.

It has recently come to the Committee's attention that the agency has failed to revise regulations governing business loan assistance to conform with major statutory revisions in that program made by Public Law 97-35. In particular, no new regulations have been published to implement provisions extending the maximum maturity of business loans and to clarify the agency's refinancing authorities. Also, no conforming changes have been made in the agency's Standard Operating Procedures to reflect these important statutory revisions, although SBA provided notice to field offices that Public Law 97-35 had been enacted.

As a result of the agency's failure to make these revisions, field offices are operating under the provisions of prior legislation and small businesses are being deprived of assistance intended to help them cope with the effects of high interest rates and the recession.

Public Law 97-35 was enacted 20 months ago. This delay in revising regulations raises the question whether the agency has selectively decided to ignore these provisions of law inasmuch as other revisions mandated by Public Law 97-35 were quickly implemented.

The Committee believes that the agency should be required to implement promptly newly-enacted laws with full program regulations in conformity with that law.

EXPORT PROMOTION

For some time the Committee has been interested in export promotion on behalf of small businesses. Small firms are very often reluctant to explore foreign markets as a source of additional sales. The reluctance stems from not knowing where to find foreign companies that want to buy the things that they produce. They fear the mechanics of selling, shipping, and particularly the mechanics of getting paid in foreign markets.

The Committee has considered ways to help small business owners increase their export opportunities and improve their access to the world marketplace. One important thing we have seen is the success that many of our State and local governments have had in their efforts to get small business people into the exporting market.

The Committee proposes an International Trade Fair provision which would authorize SBA to provide financial assistance to small business exporters to participate in international trade fairs or to cosponsor such events for the benefit of small business concerns having export potential.

Such an international trade assistance provision has received the endorsement of the National Governors' Association's International Trade and Foreign Relations Committee, chaired by Governor Bob Graham of Florida.

Guaranteed Interest Rates

Well over 90 percent of SBA's business lending activity is accomplished through the guaranteed loan programs. Typically, these programs provide for a 90-percent guarantee on loans extended to small concerns by banks and other financial institutions. The statute provides that the interest rate charged by these lenders must be legal and reasonable "but shall not exceed a rate prescribed by the Administration." SBA, therefore, has used its general rulemaking authority to promulgate, from time to time, maximum allowable interest rates.

For the last several years, this maximum has been set at up to 2¼ percent over low New York prime on loans having a maturity of under seven years and up to low New York prime plus up to 2¾ percent for loans having a maturity of seven years or longer.

In the past, SBA published a proposed rule which, if made effective, would have eliminated the 2¼ to 2¾ percent "spread" over prime. As a result of this publication, your Committee received numerous complaints from the banking community. These institutions argued that elimination of the spread would reduce the yield on SBA guarantee loans to a point where they would no longer become an attractive bank investment. Since there are already ample investment opportunities competing for bank funds, there is little economic incentive to participate in a government program which would yield a lower rate of return than available from these other types of investments. Many banks, therefore, asserted that they would abandon the SBA program if the proposed regulations were adopted.

While your Committee is, of course, deeply concerned about today's high interest rates and its devastating effect on small business, it does not believe the remedy to be reducing the interest rates on SBA guaranteed loans. While this may have some surface attraction, it would result in a far more serious problem—the unavailability of credit to small business.

Even though the proposed SBA regulation eliminating the spread has not been adopted, its promulgation alone has caused a "chilling effect" on bank participation in the guarantee program. Banks are hesitant to adopt internal procedures and spend the time, money, and effort to develop and process potential SBA guarantee applications when they have little or no assurance that the "rules of the game" will not be changed in midstream. To alleviate this concern and to provide the necessary assurance that some continuity will be preserved, the bill as considered by the full Committee had a provision to freeze legislatively SBA's present interest rate maxi-

mum for at least one year. This would have also been accomplished last Congress by H.R. 6086, which passed the House.

However, the Committee deleted this provision upon the Administration's pledge to notify the Committee at least sixty days prior to taking any action on guaranteed interest rates.

It is expected that at least sixty days' notice will be given prior to sending any advance notice of proposed rulemaking for publication in the Federal Register.

Disaster Assistance

I. ASSISTANCE TO VICTIMS OF PHYSICAL DISASTERS

The Small Business Administration provides loan assistance to disaster victims, including homeowners, businesses, and nonprofit institutions. When disaster strikes it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital for recovery as soon as possible. SBA disaster loans serve this purpose and minimize disruptions of jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of a disaster-stricken community, often making the difference in the survival of businesses necessary to that recovery.

The need for legislation

During the 97th Congress, major revisions were made in SBA's disaster loan program, both by statute and by regulation. These changes began early in 1981 when the administration took the following actions:

1. It withdrew a pending request for $780 million in supplemental disaster loan funds for SBA;
2. It suspended on March 10, 1981, the funding of all SBA disaster loans, and then published regulations on March 19, 1981, severely restricting eligibility, including (a) the elimination of any eligibility for those businesses (including farmers) able to obtain alternative financing, (b) the limitation of the amount of the loan for those businesses remaining eligible to 60 percent of losses, (c) the imposition of a $100,000 ceiling on economic injury loans, and (d) the elimination of all funding for "nonphysical" disaster loans; and
3. It requested legislation which would have eliminated eligibility for both home and business disaster borrowers with personal resources or alternative sources of financing, and which would have raised interest rates on loans to those without alternative sources of financing to a formula rate representing the government's cost of money plus 1 percent (approximately 15 percent at that time).

These actions were taken without prior notice or consultation with the Committee. The March 19th rules changes were particularly inequitable, as they applied to all pending applications not yet acted upon, with the result that victims of the same disasters were treated differently. Although a large number of loan applications were pending when these restrictions were imposed, the ad-

ministration refused to change its position, justifying it on the grounds of budgetary necessity.

Shortly after the administration took its unilateral actions, the congressional budget process forced the Committee to consider statutory changes in the disaster loan program. The First Concurrent Budget Resolution of 1981 contained instructions requiring the Committee to effect major savings in the programs under its jurisdiction. It was impossible to comply with these requirements without affecting the disaster loan program.

The Committee considered various plans by which these savings could be made, including legislation which the administration had requested. As part of the Committee's examination of the potential effects of the proposed legislation, the staff conducted interviews with victims of recent disasters who had loans approved prior to the administration's rules changes. During April of 1981, the staff took sworn depositions from 100 of these victims in Omaha and Grand Island, Nebraska, and in San Diego, Vista, Burbank, and San Bernardino, California. The witnesses were asked to describe their experiences and what effect the administration's proposed legislation would have had on their recovery had it been in effect when they suffered their losses. Of the 93 physical disaster victims deposed (61 home-owners and 32 businesses), 82 percent indicated that they would not have been able to afford the proposed terms. All recipients of nonphysical disaster loans (both for regulatory compliance and displaced businesses) indicated that without such assistance they would have reduced employment or gone out of business.

On June 3, 1981, the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems held a hearing in which testimony similar to that taken in Nebraska and California was received from Baltimore disaster victims. After considering the information obtained in these field investigations, hearings, and other sources, the Committee met on June 9, 1981, and, after several close votes, recommended disaster program revisions which were accepted by the full House on June 26th as part of the Omnibus Budget Reconciliation Act of 1981. After further compromise with the Senate, which had basically approved the administration's request, a final plan was approved in Title XIX of Public Law 97-35 on August 13, 1981.

The major revisions made in SBA's disaster loan program by Public Law 97-35 are summarized below together with regulatory revisions made by the administration. In addition to these revisions, Public Law 97-35 provided for the disposition of business loan applications affected by the administration's March 19, 1981 regulations.

SBA disaster loan program changes in the 97th Congress

A. Statutory changes made by Public Law 97-35, effective for disasters commencing on or after August 13, 1981:

(1) Public Law 97-35 imposed a "credit elsewhere" test to determine the interest rate on disaster loans to repair or replace damaged homes and personal property.

Prior legislation treated all home disaster borrowers alike, regardless of their ability to secure alternative financing.

(2) Public Law 97-35 increased the interest rate on all home and personal property disaster loans. Those able to obtain alternative financing paid a formula rate relating to the government's cost of borrowing plus 1 percent. This rate fluctuates and has been as high as 16 percent. Those unable to obtain alternative financing pay one-half the formula rate.

Prior legislation provided for a 3-percent interest rate on the first $55,000 of any disaster home loan.

(3) Public Law 97-35 increased the interest rate on disaster loans to businesses unable to obtain alternative financing to a maximum of 8 percent.

Prior legislation provided for a 5-percent rate for businesses in this category.

(4) Public Law 97-35 changed the interest rate on disaster loans to businesses able to obtain credit elsewhere to the commercial "prime" rate in effect on the day the disaster commenced.

Prior legislation provided that business in this category would pay a formula rate relating to the government's cost of borrowing.

(5) Public Law 97-35 limited the term of loans to businesses able to obtain alternative financing to 3 years, except to avoid a hardship.

Prior legislation provided for a 3-year "graduation" review. If the business was able to obtain alternative financing at that time, it was required to do so. If not, the business could keep its government loan which would be reviewed again every 2 years for graduation.

(6) Public Law 97-35 limited the amount of eligibility on all business disaster loans to 85 percent of physical losses.

Prior legislation allowed loans to cover 100 percent of physical losses.

(7) Public Law 97-35 rewrote SBA's eight "nonphysical" economic injury loan programs into a single comprehensive "government impact" loan program to help small businesses cope with the effects of government regulations or decisions. However, no funding of this program was authorized.

Prior legislation provided for nonphysical disaster loans designed to help small businesses overcome economic injury due to a variety of circumstances including, but not limited to, government regulations and decisions.

B. Regulatory changes made by SBA, effective March 19, 1981:

(1) Regulations adopted March 19, 1981, changed the criteria by which an actual disaster declaration is made, increasing the amount of damage necessary before SBA disaster assistance can be made available. The new criteria require that either:

(a) 25 homes or businesses must have suffered a 40-percent uninsured loss; or

(b) 3 businesses must have suffered a 40-percent uninsured loss and as a result 25 percent of the work force in the community will be unemployed for at least 90 days.

Under prior regulations, a disaster was of such magnitude as to trigger SBA's disaster program if it met any of the following three criteria:

(a) 25 homes or 5 businesses, or a combination of 25, suffered 25-percent uninsured losses:

(b) 3 businesses suffered 25-percent uninsured losses and as a result 25 percent of the work force in the community would be unemployed for at least 90 days; or

(c) 200 homes or 40 businesses, or a combination of 200, suffered any loss.

(2) The March 19, 1981, regulations also suspended all disaster assistance to any business deemed able to obtain alternative financing and limited remaining business disaster loans to 60 percent of actual losses. However, these regulatory provisions were overturned by Public Law 97-35.

C. Regulatory changes made by SBA, effective for all disasters commencing on or after December 18, 1981, make ineligible for disaster assistance any damages to secondary homes and their contents. Also made ineligible for such assistance were boats, vehicles and airplanes used primarily for recreation or relaxation.

Under prior regulations, disaster assistance could be provided to repair or replace such property.

The SBA's disaster program terms imposed during the 97th Congress were the most restrictive in history, and the Committee monitored closely their effects. On June 8, 1982, the Committee held field hearings in San Francisco and Santa Cruz, California to hear from victims of severe flooding and mudslides and from public officials from the affected areas about their experiences with SBA's program. On June 19, 1982, the staff also conducted interviews with flood victims in Ft. Wayne, Indiana. These three locations were selected because of the severity of the disaster damage and because they were among the first major disasters to be declared in which the disaster program revisions of Public Law 97-35 were in effect.

Witnesses indicated the the new program terms were, in many cases, causing hardships, much as a substantial majority of the 1981 witnesses in California, Nebraska and Maryland predicted they would. In addition, preliminary data appear to indicate that the percentage of disaster loan applications which are declined, withdrawn or remain unclosed after approval was increasing. Also, the Committee received testimony that the uncertainty as to what interest rate a prospective applicant would be eligible for has deterred some disaster victims from even applying for assistance, particularly when the interest rates on disaster home loans were as high as 16 percent and those on disaster business loans as high as 20½ percent.

Administrative limits on disaster home loans

The Committee took action to solve a special problem in the disaster loan program: the administratively imposed limit on the maximum amount of disaster loans for damages to homes and personal property. Although the statutory limit for these loans is the same as that for other types of disaster loans, $500,000 in most cases, SBA has administratively limited loans for physical damage to primary residences to $50,000, loans for the repair or replacement of personal property to $10,000 or to a maximum of $55,000 for a combination of such losses. Although these limits were set in 1969, and

although inflation has eroded the buying power of the dollar, damage to most homes can be repaired within these limits. In some parts of the country, however, the growth in real estate costs have considerably exceeded the inflation rate; and, in addition, real estate prices are dramatically higher than average prices for homes in the United States.

The Committee has received substantial testimony concerning the hardships which these administrative limits have caused for disaster victims who live in average homes situated in high cost areas. Statistical data supplied by SBA indicate that 90 percent of borrowers receiving loans of more than $50,000 (at or near SBA's limit on eligibility for home and personal property damages) are unable to obtain credit elsewhere; yet in some parts of the country the maximum amount of $55,000 was completely inadequate to replace a modest home or to effect a relocation after a total loss. Because these disaster victims are unable to obtain credit elsewhere, many cannot rebuild and then become renters, others move in with relatives and still others leave the community to find inexpensive housing (such as mobile homes) elsewhere. This, in turn, can effect taxes, business revenues, and the overall economic health of the community.

Statistical data provided by SBA on May 5, 1983 indicate that, for disasters in which the terms of Public Law 97-35 applied less than 1.7 percent of disaster home loans were for amounts in excess of $50,000. Undoubtedly, an even smaller percentage would have damage of $100,000 or more. The Committee believes that the fiscal impact of raising the current ceilings on SBA's disaster home loans would be minimal, and that the assistance made available by such an action would go to those most in need, those with the most serious damage and those most likely to have no alternative sources of help.

On May 3, 1983 the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems held another hearing on SBA's disaster loan program and, in particular, on the provisions of legislation referred to the Subcommittee designed to address the problems described above and to return some measure of compassion to the disaster loan program. Bills affecting SBA's physical disaster loan program included H.R. 592, authored by Mr. Gore; H.R. 1375, authored by Mrs. Boxer, Mr. Panetta, Mr. Bosco, Mr. Levine of California and Mr. Martinez; H.R. 1779, authored by Mr. Gejdenson; and H.R. 2583, authored by Mr. Mitchell, Chairman of the Committee. Appearing as witnesses on the physical disaster loan program were Mr. Panetta, Mrs. Boxer, and Mr. Gejdenson. The witnesses agreed substantially with the testimony received during the 97th Congress, that the SBA disaster loan program, as reconstituted by Public Law 97-35, was not providing adequate assistance to those most in need and, in some instances, creating hardships for disaster victims.

Recommendations

After closely examining the operation of SBA's disaster loan program for two years, the Committee concluded that the most pressing reforms needed in the physical disaster program were lower interest rates and increased ceilings on disaster home loans. The

Committee has accordingly recommended action in each area to make this vital program more responsive to disaster victims' needs and more in keeping with its original congressional intent.

The Committee recommended lowering SBA disaster loan interest rates as follows:

A. For homeowners who are unable to obtain a loan from other sources, a rate equal to one-half the cost of money to the Federal Government, but not to exceed 4 percent;

B. For homeowners who are able to obtain a loan from other sources, a rate equal to the cost of money to the Federal Government, but not to exceed 8 percent;

C. For businesses who are unable to obtain a loan from other sources, a rate equal to exceed 4 percent; and

D. For businesses who are able to obtain a loan from other sources, a rate which is the lowest of the following: (1) The rate prevailing in the private market for similar loans; (2) The maximum rate of SBA guaranteed business loans; or (3) 8 percent.

The administration would be required to reduce the interest rate on outstanding loans made as a result of all disasters commencing on or after October 1, 1982.

The Committee further recommended amending the Small Business Act to prohibit SBA from arbitrarily setting a cap on disaster loans to homeowners at less than $100,000 on account of damage to real estate, $20,000 on account of damage or loss of personal property, or $120,000 for combined losses.

The Committee also recommended that businesses again be made eligible for loans of up to 100 percent of the amount of their net, uninsured loss up to a statutory maximum of $500,000 per disaster, with an exception being possible for a major source of employment.

II. NONPHYSICAL DISASTER ASSISTANCE

1. Economic injury

Economic Injury Disaster Loans under section 7(b)(2) of the Small Business Act are provided by the Small Business Administration to firms that have suffered economic damage when normal free market forces are disrupted by a declared natural disaster.

In areas hit by major or natural disasters, determined by the President, the Secretary of Agriculture, or the Administrator of SBA, small firms suffering substantial economic injury, i.e., economic loss, that cannot get credit elsewhere are eligible for SBA loans. In the event that a natural disaster was not of sufficient severity to result in one of these three disaster declarations, SBA may still provide disaster loan assistance upon the direct request of the Governor of the State involved.

Loan funds may be used to provide working capital and to meet short-term financial obligations that the borrower would have been able to meet if not for the disaster.

To qualify for assistance, an entity must meet size standard regulations (13 CFR 121) to ensure that only "small" concerns are assisted. Farm co-ops, however, were not considered businesses by the SBA. Instead, despite obvious differences, SBA officials have said that "Co-ops are non-profit in the same sense that the American Heart Association is non-profit." Thus, co-ops could receive EIDL's

only if each and every member completed the SBA's Form 355 and is certified as being "small."

To anyone who understands the nature of agricultural co-ops and the statute establishing them (the Capper-Volstead Act, Public Law 67–146), it is more realistic to consider co-op members as customers, rather than shareholders. It is clear, then, that the SBA's requirements could often inequitably disqualify a co-op from EIDL assistance.

Some co-ops have hundreds of members, many with only a tenuous relationship with the financial structure of the co-op itself, and it is unreasonable to require that each member provide financial statements to substantial size; if 149 out of 150 members comply, the co-op remains ineligible.

Some members are "passive," being landowners who are co-op members only because their tenants desire to market crops through a cooperative. Frequently, these landowner/members are substantial investors who do not, themselves, qualify as "small"; their affiliation, however peripheral, makes the entire co-op ineligible for an EIDL.

Therefore, for two cotton gins located in the same town, having the same size and scope of operation, the result is that one gin, privately owned, received a loan, while the other, cooperatively owned, cannot qualify.

In the past, some SBA regional offices recognized these problems and waived the every-member size standard requirement. The Small Business Act was unclear in its application to co-ops, however, and size standard provisions were applied unevenly. Under its interpretation of the law, the present administration refuses to waive these paperwork requirements or change the regulations governing EIDL assistance. Therefore, the Committee has decided to correct this inequity by amending Section 7(b)(2) of the Small Business Act to clarify the standards of eligibility of farm co-ops for EIDL aid, and to exempt farm co-op members from size standard determinations when being considered for EIDL's.

2. Economic dislocation

The Committee continues to be concerned over the very serious impact of the current peso devaluation crisis on small businesses along the Mexican-American border, and the extent of the administration's efforts to counter this difficult economic dislocation.

Both in this and the prior Congress, Members have sponsored legislation to remedy this critical situation and have been opposed by the Small Business Administration which cites the agency's response through targeted direct lending as the solution. This is disingenuous in the extreme as the administration is on record as against any SBA direct lending.

In this Congress, the Committee has recognized the continuing crisis. Ten Members presented testimony on their legislation to reinstate the SBA Economic Dislocation Assistance, at the May 3, 1983, Subcommittee hearing.

In September of 1982, Committee staff surveyed U.S. cities and towns in Texas bordering along Mexico to examine the impact on American small businesses of the Mexican Government's currency devaluation and restrictions. Hearings were held in Washington,

D.C., on September 29, 1982, and field hearings covering the impact on Arizona, New Mexico and California were held on November 8, 1982.

The United States border with Mexico is some 1,800 miles in length and includes the borders of four states: Texas, New Mexico, Arizona and California. The Mexican communities on the other side of these borders include some 2.5 million residents. These Mexican communities have been isolated from the delivery of goods from central Mexico. They have relied to a large extent upon U.S. manufacturers, wholesalers and retailers in the border regions.

Mexico's problems have already led to peso devaluations in February, August and December of 1982 and have driven the rate of exchange of pesos to dollars from 25 to 1 in January of 1982 to a rate in excess of 200 to 1. For border businesses highly dependent on Mexican customers these devaluations have translated into economic disaster.

For businesses in border towns dominated by large Mexican-side populations the most obvious effect of devaluations had been the sharp drop in customers. The once familiar bustle in the commercial districts of these towns has been replaced with inactivity. The decline in retail sales has triggered a multitude of problems all along the border area not the least of which is for municipalities faced with declining revenue.

At the Subcommittee's May 3, 1983, hearing Mr. Kazen stated:

> If a hurricane-force wind blew along the Rio Grande, or an earthquake struck anywhere along the border between the United States and Mexico, our country would immediately go to the rescue. In my view, that is one of the most important functions of the Federal Government—to assist the various states, localities and individuals in times of emergencies beyond their control.
>
> Picture if you will a fire or flood closing hundreds of businesses and damaging nearly every other firm in town, contributing to a 28.6 percent rate of unemployment—some 12,000 to 14,000 persons. Imagine a city government forced to lay off 120 employees because of a decrease in revenue, think about overcrowded free health clinics and a police department suddenly faced with increased thefts and burglaries.
>
> This is the situation in my District, in Laredo, Texas and much worse in Eagle Pass, which is also in my District, and in many of our cities along the border between Brownsville, Texas, and San Diego, California. The problem is compounded because this disaster was not caused by fire, flood, wind or earthquake, but as the result of the drastic fluctuation in the value of currency in Mexico. The result is equally disastrous, and equally beyond the control of the many Americans who suffer, but under present law low interest assistance is available for natural disasters and not for economic disasters. And make no mistake about it, this is a disaster in every sense of the word.

In his 1981 budget message to Congress the President requested the termination of SBA's non-physical disaster loan program. The

Gramm-Latta Act forced the House to restructure the program and in so doing eliminated the applicability to economic dislocation resulting from foreign currency devaluation. The result was no funding for non-physical disaster relief in fiscal years 1982, 1983, and 1984. Therefore, more than a simple refunding of the non-physical disaster loan was required. Specific coverage of economic dislocation arising from foreign currency devaluation was required.

Legislation is needed to reinstate the pre-1981 SBA non-physical disaster loan program, and to make it specifically applicable to economic dislocation arising from foreign currency devaluation. Small businesses in a qualified disaster area would be eligible for loans, and for refinancing of existing indebtedness including SBA 7(a) direct loans if conventional financing is not available. Businesses could borrow up to $100,000 and the payment of all interest and principal could be deferred for one year. The loans could be used for working capital and to pay financial obligations which the small business owner could otherwise have met had the disaster not occurred. Funding for the program would come from the existing revolving fund for SBA disaster loans and be subject to the availability of such funds.

3. Assistance to small concerns adversely affected by Government action

In the 97th Congress part of the Administration's effort to restrict Federal credit was H.R. 2997 which as introduced, would have eliminated the authority for the non-physical disaster loans then authorized by subsection 7(b)(3)–(9) of the Small Business Act. These non-physical disaster provisions of the Act evolved as a result of responses to specific problems facing businesses such as among others, the adverse effect of military base closing and Government regulations.

The Committee did not approve the Administration's requests but agreed that the diverse non-physical disaster lending programs should be consolidated into a single program providing relief to small concerns directly or indirectly adversely affected by Federal Government action. This is the present section 7(b)(3) of the Act, which offers those small concerns unable to obtain credit elsewhere some Goverment assistance.

Certainly, the Committee fought for this important program at that time based on the conviction that basis fairness requires those businesses forced to relocate or alter operations as a result of Federal action should have available a Federal Government program to redress the injustice. The Committee bill H.R. 2998 contained this program.

The 7(b)(3) program, as passed the House, was funded through fiscal year 1984. However, further Conference action on the bill containing this change, then H.R. 3982 (H.R. 2998), had the unfortunate result of eliminating any present funding for the consolidated 7(b)(3) program. The Federal Government should never be in a position of forcing a small concern to close its doors with no hope of financial assistance to reestablish in business. The Committee bill would correct this situation by providing a modest authorization to assist those small concerns unable to secure credit elsewhere.

The Committee also desires to make it clear that the 1983 payment-in-kind (PIK) program to farmers (which pays farmers to remove land from production with the "payment" being in the crop being withdrawn from production rather than in cash) constitutes Federal Government Action for purposes of Section 7(b)(3) of the Small Business Act.

Those small businesses injured thereby are eligible for economic injury disaster loans. This will make eligible for loan assistance small manufacturers, wholesalers and dealers of items such as fertilizer, farm machinery, pesticide, seed, etc. experiencing loss of sales because farmers are not planting.

This is a serious problem of unknown scope. However, the Department of Agriculture estimates the following declines as a result of the PIK program: overall purchases by farmers down 57 percent; fertilizer sales to farmers down 12–14 percent; farm machinery sales down 12–15 percent; pesticide sales down 12–15 percent; and energy consumption (e.g., tractor and combine fuel) down 8–10 percent.

Private trade associations estimate an even greater impact. For example, the National Fertilizer Association estimates fertilizer consumption will decline 22–25 percent on a conservative basis. Individual State polls indicate fertilizer sales in Illinois are down 29.8 percent and in Indiana down 27.5 percent subsequent to the 1983 PIK program. The Committee believes strongly that small business adversely affected by the PIK program should be eligible for non-physical disaster assistance.

Farmer Disaster Assistance at SBA

Prior to Public Law 96-302 farmers were statutorily eligible for assistance from SBA for all forms of physical disaster assistance, including crop loss. In addition, under certain rather confusing and inequitable circumstances, farmers were also eligible for assistance from the Farmers Home Administration. At that time there was no requirement that farmers first seek assistance from Farmers Home Administration before going to SBA.

Public Law 96-302 amended the Small Business Act to clarify that an agricultural enterprise would not be eligible for SBA physical disaster loan assistance to repair or replace property other than a residence unless that enterprise was first declined for, or would be declined for, emergency loan assistance from the Farmers Home Administration at substantially similar interest rates.

The primary reason for that amendment was to accommodate the Administration's policy of attempting to maximize the number of agricultural producers whose financial needs resulting from a physical or natural disaster are served by FmHA's emergency loan program rather than by SBA's disaster loan program. The Committee concurred in this intent provided that an agricultural producer receives emergency loan assistance at substantially similar interest rates for FmHA as a non-agricultural business received from SBA.

The Committee stresses the underlying issue is one of equality and lack of discrimination and again states the basic premise that unless agricultural enterprises receive emergency loan assistance at substantially similar interest rates from FmHA as other busi-

ness disaster victims receive from SBA, they may seek assistance from SBA.

Subsequent Action

Consideration of H.R. 3020 took place in the Committee of the Whole House on the State of the Union on March 13, 14, and 15, 1984 under H. Res. 365, reported from Rules November 8, 1983, (Rept. 98-508).

There were numerous amendments to H.R. 3020. The Chairman offered a series of amendments on SBA program levels and authorizations:

(1) increasing the program authorization for total direct loans in fiscal year 1984 from $295 million to $303.5 million, the amount which has been appropriated pursuant to authorizations in existing law. As a part of this increase, it also increases direct loans to handicapped in each of fiscal years 1984 and 1985 from $15 million to $20 million;

(2) increasing the program authorization for total loan guarantees in fiscal year 1984 from $2.93 billion to $3.03 billion, including guaranteed loans to development companies in each of fiscal years 1984 and 1985 from $250 million and $340 million, respectively, to $350 million each;

(3) reducing a sub-authorization for budget authority for salaries and expenses for fiscal years 1984 and 1985 from $313.4 million and $331.3 million, respectively, as now stated in the bill to $295 million and $306.8 million, respectively.

The amendment reduces a sub-authorization for budget authority for loan programs in fiscal years 1984 and 1985 from $1,112 million and $999 million, respectively, to $670.39 million and $747.3 million.

Reducing total budget authority for fiscal years 1984 and 1985 from $1,439.7 million and $1,351.3 million, respectively, to $986.39 million and $1,075.1 million, respectively.

Since H.R. 3020 was reported from Committee in 1983 and provided 2 year's authorizations, for fiscal year 1984 and 1985, due to the lapse of time, an amendment was made to simply insert authorizations for 1986 at the same level as provided for 1985 plus 4% for inflation.

An amendment was adopted to extend for one year, until October 1, 1986, a provision permiting SBA to agree to the payment of interest only on loans during the initial term of the loans if all parties agree.

The Chairman's amendment to strike section 208 which would have modified SBA's authority over a firm's participation in the small business and capital ownership development program, was accepted.

Section 208 would have placed in the Small Business Act then current regulations that require each firm participating in the 8(a) minority business development program to receive a fixed period of participation in the program.

The House adopted the Chairman's amendments correcting duplications in references caused by amendments adopted in Commit-

tee and making the bill effective on enactment, rather than retroactively.

Further amendments adopted on the Floor of the House include:

An amendment requiring SBA to contract out for the operation and maintenance of the Procurement Automated Source System (PASS) for fiscal year 1985 and requires a competitive procurement for PASS for fiscal year 1985.

An amendment requiring SBA, under its own business set-aside procurements, to give due consideration to the actual portion of the work to be performed by small concerns, e.g., PASS or other research work.

An amendment affecting SBA's Timber Set Aside Program requiring the Interior Department, in computing the small business share of timber purchases by non-manufacturers, to treat a sale as being too big or too small business according to the actual or predicted size of the manufacturer who repurchases the timber from the non-manufacturer. This amendment would also have prohibited the re-sale to non-small businesses of timber purchased by a small business in region 8 of the Forest Service of the Department of Agriculture under a small business set-aside or preference.

An amendment requiring SBA to report on the effectiveness of guarantees on 7(a) loans of less than $50,000 to businesses with fewer than twenty employees.

The House further amended H.R. 3020 with provisions on disaster assistance (1) making agricultural enterprises eligible for disaster loan assistance on account of a drought commencing on or after January 1, 1983 and prior to October 1, 1983; (2) extending disaster loan assistance to commercial fishing and related industries affected by recent El Nino-related ocean conditions; and (3) extending until October 1, 1986, the requirement that farmers seek disaster loan assistance from the Farmers Home Administration before they are eligible to apply for SBA disaster loan assistance.

The full House passed H.R. 3020 on March 15, 1984. On the same date these proceedings were vacated, H.R. 3020 was tabled and the Senate's version of this omnibus legislation S. 1323, amended to contain the provisions of H.R. 3020, was passed by the House.

The House requested a conference on March 15, 1984. The Senate agreed to a conference on May 10, 1984. Due to administration opposition to any Small Business Act amendments not containing disaster relief program changes not fulfilling their demands Conferees were unable to agree.

With minor exceptions, the SBA disaster loan program provisions in H.R. 3020, as reported to the House, were enacted as Title III of the Reconciliation bill H.R. 4169, Public Law 98-270.

The provision making victims of El Nino eligible for disaster assistance, although not included in P.L. 98-270, was subsequently enacted in P.L. 98-473, the 1985 Continuing Resolution. This Act also prohibits SBA from making eligibility for economic injury assistance under Section 7(b)(2) or for nonphysical disaster assistance under Sections 7(b)(c) or 7(b)(4) in any way dependent on a minimum number of businesses meeting minimum damage standards, as SBA had proposed in revised regulations to implement P.L. 98-270.

Provisions on pollution control financing in H.R. 3020 (and in H.R. 6013) were enacted in the Continuing Resolution for Fiscal Year 1985, Public Law 98-473.

THE WOMEN'S SMALL BUSINESS OWNERSHIP ACT OF 1984 (H.R. 3832) HOUSE REPORT 98-750 PART I

H.R. 3832, The Women's Small Business Ownership Act of 1984, was jointly referred to the Committees on Small Business; Banking, Finance and Urban Affairs; and Government Operations.

The bill was introduced by Representative Jim Moody for himself and thirty (30) co-sponsors on August 4, 1983. At the time of filing the Committee report on May 15, 1984, the bill had a total of 84 cosponsors.

The Committee on Small Business conducted a hearing on H.R. 3832 in Washington, D.C. on April 12, 1984. After consideration of the testimony and other available information, the Committee, by voice vote, ordered the bill favorably reported with an amendment in the nature of a substitute at a Committee meeting held on May 1, 1984. The Committee on Banking, Finance, and Urban Affairs discharged H.R. 3832 without consideration on July 30, 1984. The Committee on Government Operations failed to take any action on the measure.

The Purpose of the Bill

H.R. 3832 provided for the establishment of a bipartisan National Commission on Women's Small Business Ownership. Through this Commission, the bill would provide a central focus for a review of the status of women owned small businesses, with particular attention to the special needs of women business owners who are socially and economically disadvantaged. Based upon its investigation, the Commission would recommend private sector and Federal initiatives to assist women entrepreneurs to overcome business impediments caused by discrimination.

The Need for the Legislation

Women owned business constitutes the fastest growing segment of the small business economy. By all indications, women are going into business at a rate five times faster than men and now own approximately three million businesses, or about one-quarter of all small enterprises in the United States. Business receipts, however, have not kept pace with the increase in ownership. According to the figures available from the Internal Revenue Service, gross annual receipts from women owned sole proprietorships are less than one-tenth of their male counterparts. Women face impediments in business fields as the result of both past and present sex discrimination. Equity alone demands, therefore, that the Government make an affirmative effort to eliminate these discriminatory barriers. Moreover, from a strictly economic standpoint, it simply does not make any sense to ignore the creativity, talent and ingenuity that over one-half of our population may contribute to economic growth.

While there have been previous efforts to identify the problems of female entrepreneurs, many of these efforts are dated. Other reviews were either fragmented or too narrowly focused or tainted by political influences to be of value. Accordingly, not one of these efforts has resulted in the adoption of any legislation or substantive administrative reform.

A national commission on women's small business ownership comprised of members appointed by the President, the Senate and the House of Representatives is needed to ensure a bipartisan approach. Members of the Commission should be selected in a way that will promote a balanced representation of varied interests.

Moreover, investigators should be directed toward topics which are determined to be of primary concern to female entrepreneurs. Finally, a review should be made of all previous efforts to explore issues related to women in business so that both the legislative and executive branches of the Federal Government may be presented with recommendations for corrective action.

DESCRIPTION OF H.R. 3832

I. Establishment of a National Commission

The bill would establish a nine-member, bipartisan National Commission on Women's Small Business Ownership. The Commission would function for a period no longer than 26 months and terminate upon submission of a final report to the President and to the Congress.

II. Duties of the Commission

In April 1980, the White House Commission on Small Business issued a report addressing issues relating to small business generally and including findings and recommendations relating to minority and women-owned businesses. The National Commission established by H.R. 3832 would review and evaluate the present status of women-owned small business throughout the United States and would assess the progress made since the 1980 White House Conference on Small Business.

The review of the Commission would build upon previous studies, including the 1980 Report of the White House Commission. It would track efforts made by Government and private sector groups to implement the recommendations, and make independent evaluations and projections for the future.

Statistics appear to indicate that while business skills and abilities are not related to gender, women-owned businesses do not succeed at the same rate as the industry average nor do they achieve levels of profitability for which they have potential. The Commission established by this bill would bring together information necessary to confirm or refute these assumptions.

There are a number of sources for data which relate to the status of women-owned small businesses. The Commission would be required to collect available data and also to review data collection procedures and to identify gaps and discrepancies.

The Commission would review the role of the Federal Government in aid to and promotion of women-owned small businesses. It was the Committee's belief that a bipartisan study of present and

past initiatives to promote business and economic goals generally could be applied to the task of defining how, why, and to what extent the Government should be involved in addressing gender-related business problems.

The Commission's review is also to include all existing Federal initiatives relating to women-owned small business including, but not limited to, Federal procurements and the provision of management and technical assistance.

In the performance of its duties, the Commission would be required to give particular regard to the special problems and impediments that plague women business owners who are members of socially and economically disadvantaged groups. Members of minority groups face problems of racial discrimination which impede access to resources needed to establish or maintain a business. When this disadvantage is combined with inherent cultural problems related to being female, the effects of each are exacerbated. For this reason a special directive was included to ensue that attention be given to the differences in the nature and severity of problems experienced by this subset of women-owned small businesses.

H.R. 3832 would require the Commission to make recommendations based upon its review. While the number or character of these recommendations would not be limited, the bill specified the inclusion of recommendations concerning private sector initiatives, specifically those that would provide management and technical assistance, ways to promote greater access to financing and procurement opportunities in the Government and the private sector, and initiatives to address the particular problems of businesses owned by socially and economically disadvantaged women.

The bill included a number of definitions for the purpose of guiding the Commission and adopted the definition of "small business" contained in section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

III. Membership

The bill would require that the Commission be comprised of nine persons to be appointed in the following manner: three persons appointed by the President; three persons appointed by the Senate majority leader from a list of fifteen submitted to the Senate majority leader by the Chairman of the Senate Small Business Committee; and, three persons appointed by the Speaker of the House from a list of fifteen persons selected and nominated by the Chairman of the House Committee on Small Business. The bill provided that individuals appointed must be qualified by education, training, or experience, and could not be officers or employees of the Federal Government or of Congress. Geographical balance would also be given consideration.

The Commission would be bipartisan: no more than six could be of the same political party, at least six of the nine must be women; at least two of the nine must be socially disadvantaged; and at least three must be owners of small businesses.

In order to help avert confusion that might be caused by duplicate nominations or appointments, appointments under each group would be staggered with those made by the President being made within 90 days, those made by the Senate within 120 days, and

those made by the House within 150 days of the effective date of the Act.

The Chair and Vice Chairpersons are to be designated by the President for the life of the Commission. Members would serve without pay but would be entitled to reimbursement for necessary expenses.

The bill included technical provisions for filling vacancies, for defining and specifying the use of quorums, the number of meetings required, and for the manner of calling meetings.

IV. Commission Director and Staff

The Commission Director and four additional personnel would be appointed by the Chair. The Chairperson would be permitted to request personnel assistance from any Federal agency and would have authority to procure research or technical services as needed.

V. Powers of the Commission

The Commission would conduct hearings, administer oaths or affirmations, take testimony, and take any action deemed appropriate.

VI. Reports

The bill would require an interim report every six months and a final report to be submitted to the President and to the Congress within 26 months of the Commission's first meeting. The final report would include detailed statements of findings, conclusions, and recommendations for legislative and administrative action, and suggest such private sector measures as deemed appropriate.

VII. Termination

After transmitting its final report to the President and to the Congress, the Commission would cease to exist.

VIII. Authorization of Appropriations

The bill authorized the appropriation of funds necessary to carry out the duties of the Commission and limited contracting authority to amounts appropriated in advance.

SMALL BUSINESS ACT PROGRAMS AMENDMENTS (H.R. 6013) HOUSE REPORT 98-914

The Committee reported H.R. 6013, with amendments, to the House of Representatives on July 27, 1984, House Report 98-914, excerpts of which are as follows.

The Purpose of the Bill

The purpose of Committee's bill, H.R. 6013, is to increase three Small Business Administration program levels to amounts previously funded in the 1984 appropriations bill and to provide guaranteed financing for pollution control facilities. This increase will permit $5 million in additional loan assistance to handicapped, $6 million in additional direct assistance to Minority Enterprise Small Business Investment Companies, and $90 million in additional guarantees of Small Business Investment Companies' debentures.

BACKGROUND

The Small Business Administration administers financial assistance programs, including direct loans to handicapped and organizations of handicapped, the purchase of debentures and preferred securities from Minority Enterprise Small Business Investment Companies (MESBICs) which specialize in providing financing to socially or economically disadvantaged firms, and guarantees of debentures issued by Small Business Investment Companies (SBICs).

(1) HANDICAPPED ASSISTANCE LOANS (HAL)

The Small Business Administration may make loans in two categories: loans to nonprofit organizations (HAL–1) and loans to small business concerns owned, or to be owned, by handicapped individuals (HAL–2).

HAL–1 financial assistance is available to public or private nonprofit sheltered workshops, or any similar organizations which employs handicapped individuals for not less than 75 percent of the man-hours required, to enable them to produce and provide marketable goods and services. HAL–2 financial assistance is available for the establishment, acquisition, or operation of a small business concern 100-percent owned by handicapped persons.

(2) SMALL BUSINESS INVESTMENT COMPANIES (SBIC'S)

The SBA helps finance small firms through privately owned small business investment companies. SBIC's are SBA-licensed companies which supply equity capital and long-term loan financing to small firms for expansion, modernization, and sound financing of their operations. SBIC's must operate within SBA regulations but their transactions with small companies are private arrangements and have no connection with SBA.

SBIC's invest in practically all types of manufacturing and service industries, and in a wide variety of other types of businesses, including construction, retailing, and wholesaling. Many seek out small businesses offering new products or services because they believe these firms have unusual growth potential.

An SBIC finances small firms in two general ways—by straight loans and by venture capital or equity-type investments.

(3) MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES

Minority Enterprise Small Business Investment Companies (MESBIC's) are SBIC's which specialize in providing equity funds and long-term loans to small business concerns owned by socially or economically disadvantaged persons. MESBIC's are governed by the same modifications, providing a program that is specially responsive to the needs of the disadvantaged business community.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

(4) POLLUTION CONTROL GUARANTEES THROUGH FEDERAL TAX-EXEMPT BOND FINANCING

The Small Business Administration, in cooperation with commercial banks and State agencies, helps small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities. SBA is authorized to issue an unqualified guarantee of 100 percent of the payments of rentals or other amounts due under qualified contracts with respect to the planning, design, financing, or installation of pollution control facilities.

NEED FOR THE LEGISLATION

(a) Program levels

As part of the Gramm-Latta reconciliation bill (P.L. 97-35) SBA program levels were set through fiscal year 1984. These included, for fiscal year 1984, handicapped direct loans of $15 million, MESBIC assistance of $35 million and SBIC assistance of $160 million. Subsequently, the Small Business Committee voted in H.R. 3020 to increase these programs to $20 million, $70 million and $250 million, respectively. The Senate Committee, in S. 1323, made identical increases for the handicapped and regular SBIC programs and increased the MESBIC level to $45 million. The 1984 appropriations bill (P.L. 98-166) appropriated sufficient funds, when added to the business loan and investment revolving fund, to permit handicapped direct loans of $20 million, MESBIC assistance of $41 million, and regular SBIC assistance of $250 million.

Although both the House and Senate passed authorization bills and appointed conferees on S. 1323, administration opposition to other provisions eliminated any resolution of the differences and thus the legislation died.

Prior thereto, at the beginning of fiscal year 1984, SBA obtained OMB permission to approve financial assistance in these categories at the higher levels cited in the conference report on the appropriations bill. Even after it became clear that the authorizations provided in the Small Business Act would not be increased, SBA ignored the Small Business Act program ceilings and continued to spend at the higher levels through the first 9 months of this fiscal year.

The Comptroller General subsequently issued opinion B-214172 on July 13, 1984 which concluded that ". . . the spending levels established in section 20(q) of the Small Business Act for the three loan programs . . . have not been superseded or repealed and remain in effect."

As a result of SBA's previously having spent at the higher level, during the balance of this fiscal year the handicapped program has been shut down, the MESBIC program has been curtailed and the SBIC program has been greatly reduced.

(b) Pollution control financing

Congress recognized that small businesses, because of their generally limited credit history and the smaller size of their financing requirements, often are unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and nonpro-

ductive nature of required pollution control facilities are often more than small businesses can be expected to handle. Therefore, Congress authorized SBA, commercial banks and State authorities to make long-term low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guarantee of the small concern's obligation under a contract involving the facility.

Through this program, small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantee for tax-exempt.

The SBA Pollution Control Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses, thereby enabling them to comply with environmental requirements.

The restoration of the guarantees contemplated by the provisions of this legislation is more critical now than when those guarantees were authorized in 1976. The needs of small businesses and the communities in which they produce and serve for installing pollution abatement facilities and equipment and for disposing of wastes have continued, and the advent of a more targeted national focus on the control of toxic and hazardous wastes and substances since the original enactment of this program indicates that those needs may increase.

From the date the SBA prohibition was put into effect, only five of the original 100-plus applicants were able to proceed with some form of taxable financing guarantee. That reality has had no impact within the Administration in persuading it that its policy was wrong.

Unfortunately, the SBA and OMB have refused congressional directives to heed that tax-exempt pollution contract guarantees are of vital importance to the survival of small businesses. It is important to note that in many instances the small concern's net worth is exceeded by the costs of these pollution control facilities. A business that does not have the assets to use as collateral for a taxable loan will have to close its doors or be in non-compliance with environmental mandates. These alternatives are unacceptable. Therefore, the Committee must legislatively correct the misunderstanding of the purposes of the program.

In addition, the Committee notes that since its inception, this SBA Guarantee Program has been a revenue raiser through the fee

SBA levies on businesses using the guarantee; it is self-sustaining and fosters economic activity throughout the country.

What the Bill Would Do

H.R. 6013 would increase three SBA program levels for 1984: the handicapped direct loan program level to $20 million and the regular SBIC level to $250 million, the amounts previously approved in separate legislation passed by both the House and the Senate, and the MESBIC program level to $41 million, which is less than the amount previously approved by both the House and Senate. Sufficient funds already have been appropriated to carry out these levels.

Also, the bill would prohibit SBA from denying applications for guarantees under the Pollution Control Contract Guarantees program solely because part of the proceeds for construction of the facilities are from tax exempt revenue bonds.

The bill expressly does not authorize any additional appropriations and none is contemplated.

Conclusion

The increases in program levels provided by this bill are non-controversial. They have already been funded by the 1984 appropriations bill which contains SBA monies. Without the bill, prospective recipients of this assistance, including handicapped individuals and organizations of handicapped, will be denied assistance until funds are released at the beginning of fiscal year 1985—and these are the same funds which could be released now by enactment of this bill.

Subsequent Action

On July 30, 1984, the House passed H.R. 6013 under suspension of the rules. The Senate passed H.R. 6013, with amendments, on September 17, 1984. The Senate endorsed the higher program levels in H.R. 6013 (as it had when passing S. 1323) but amended the bill by striking section 2, the SBA Pollution Control Guaranty Program amendments.

As part of the Deficit Reduction Act of 1984, signed into law by the President on July 18 (Public Law 98-369), Congress made it clear that qualified SBA-guaranteed pollution control contracts continue to be financed with tax-exempt industrial development bonds. The changes in H.R. 6013 passed by the House were designed to bring, by statute, the SBA program into line with the recent congressional decisions in the tax bill. The Senate rejected this House initiative based on opposition of the Senate Finance Committee.

On September 26, 1984, the Chairman, by unanimous consent secured House disagreement to the Senate amendments to H.R. 6013 and secured a request for a conference. There was no further action on H.R. 6013. However, the SBA Pollution Control Program amendments in H.R. 6013 were enacted as part of the Continuing Appropriations Act for Fiscal Year 1985, Public Law 98-473.

On November 11, 1984, the SBA issued a notice to its field offices directing them once again to accept applications for guarantees for

financings of pollution control facilities obtained with proceeds from tax-exempt industrial revenue bonds.

Chapter 6—Full Committee Activities

ASSISTANCE TO MEMBERS OF THE HOUSE

One of the more important aspects of the work carried on by the House Small Business Committee is the assistance provided Members of the House seeking to help their small business constituents. The Committee and its professional staff perform a considerable volume of this "casework" for Members who request such assistance. Many of the daily requests for Committee assistance also involve guidance on or clarification of Federal policies and actions affecting small business. Many of these are in regard to Federal procurement policy. The Committee constantly promotes the policy embodied in the Small Business Act of 1953, "to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprises . . .", but implementation of the intent of Congress is left to the Small Business Administration and procuring agencies. Each year the legislative and executive branches expend much time, energy and other resources to ensure that small businesses receive adequate consideration when the Government purchases goods and services.

Many Members have also expressed a continuing interest in the adverse effects on small business of large firm merger activity and the reduced credit availability and resulting higher interest rates; export assistance for small firms; small business research and development initiatives; and continuation and certainty in SBA programs, especially the disaster assistance loan programs.

The problems presented usually require the staff to contact various governmental agencies and departments and frequently entail independent legal research in order to provide satisfactory answers for the Members and their constituents. In accordance with the well-established policy of the Committee, all such requests of Members receive priority consideration.

The Committee's ongoing informational services include timely release of news to the print and broadcast media about legislation, hearings, special studies, task forces and Government activities pertinent to the jurisdictions of the full Committee and the six standing subcommittees.

Additionally, the Committee periodically publishes for distribution to the media and trade a newsletter that highlights legislative initiatives relating to small business and special concerns of the Committee and Subcommittees. And, as a quick reference on current small business issues, the Committee compiles and circulates among Committee and subcommittee members and staffs weekly compilations of published news items.

HEARINGS

Early in its First Session, the 98th Congress set as one of its priorities meeting the Nation's economic problems with essential and productive jobs. Congress found that the economic recession had resulted in unemployment in America rivaling that of the Great Depression. The annual cost of unemployment compensation had become staggering. The hardships occasioned by the recession had been much more severe in terms of duration of unemployment and reduced percentage of unemployed receiving jobless benefits than in previous recessions. Business failures were up 49 per centum compared to the prior year and delinquencies were many times greater. The American farmers were $215,000,000,000 in debt. Hundreds of thousands of farmers were faced with bankruptcy. To reverse this trend Congress wanted programs which result in creation of productive jobs and at the same time a lowering of interest rates with due regard for controlling inflation.

This congressional mandate guided the Committee in its legislative and oversight agenda for the 98th Congress. Committee efforts emphasize that small business is critical to the growth and stability of our Nation's economy. To be viable any economic recovery program must take into account the role of small business in the economy. On the average, at least 60 percent of all jobs in the United States are generated by firms with twenty or fewer employees. Approximately 50 percent of all new jobs are created by small business. Also, over 50 percent of the major inventions in this century are directly tied to small business; the advances in technology have resulted in one of the highest standards of living in the world.

In order to promote long-term economic recovery and sustain an increase in the number of small firms and small business employment, the Committee continually assesses the major policy issues that affect the small business sector. The existing fiscal and tax, employment and skills training, Federal procurement, antitrust, export promotion, and Federal research and development policies are all very important to the role that small business can play in the recovery of our economy as is the role of the Small Business Administration. The Committee believes that current Government policies must do more to take into account the unique needs of small business.

Although Committee activities and hearings are divided into legislative and oversight areas, oversight/investigative hearings frequently provide the background and impetus for legislative activities.

An important part of Committee and Subcommittee activities is field hearings: an effort to keep open the line of communication for necessary legislation for those unable to travel to Washington to express their concerns. The Committee continues these hearings to hear directly from small businesses and their representatives about the effects of current economic policies and about the problems they are encountering with the Federal Government.

As has been recent history, the Committee's beginning schedule was monopolized by a series of hearings made necessary by the Reagan administration's budget request and resultant program change requests for the Small Business Administration.

On March 1 and 2, 1983, the full Committee received testimony from SBA on the 1984 budget request for the agency. The SBA budget of fiscal year 1983 proposed to eliminate direct loan funds for the handicapped, the economically and socially disadvantaged, and those other small businesses unable to get funds from any other source. For Fiscal Year 1983, Congress continued direct loans, although at a reduced level, because guaranteed loans do not fill the role of direct loans.

As in the previous presidential budget submission, the 1984 budget proposed to eliminate the same direct loan programs. The administration's efforts to eliminate SBA's direct loan program and reduce drastically the guaranteed program were not well received. The Committee contends that small and medium size firms need massive amounts of credit to participate in the projected economic recovery and the country needs the thousands of new jobs these businesses will generate. Reducing the number and dollar volume of direct and guaranteed loans was perceived as a backward step. Congress did not go along with the administration request. SBA did have direct business loan funds available during fiscal year 1984: Of the $201.3 million approved for new direct loans, $108.3 million available to qualifying small businesses generally, and the balance earmarked for specialized loan programs. These include $20 million for handicapped assistance loans, $45 million for loans to businesses in areas of high unemployment or owned by low-income individuals, $3 million for businesses developing or marketing new energy or energy conservation technology, and $25 million for loans to veterans.

The Committee continues to be concerned about individuals and businesses unable to obtain commercial financing, no matter how meritorious their business proposal. The direct loan program fills an important gap in helping these businesses get started and enter the mainstream of the economy, while at the same time creating jobs and promoting innovation. Drastic budget cuts in recent years and the administration's persistent efforts to eliminate direct loans entirely have resulted in periodic interruptions in the availability of direct loan funds. The Committee, over the past several years, has shared the concerns of financial institutions and those sharing SBA program responsibility with the agency about the lack of certainty in the delivery of assistance to small and small disadvantaged business concerns.

Again, in the beginning of the Second Session of the 98th Congress the Committee hearings disclosed that the administration's approach to the SBA's fiscal 1985 budget was much the same. Opposition to Committee initiatives for direct business loans and to loans small firms injured by nonphysical disasters was, however, overcome. Overall the Committee, acting in concert with the Appropriations Committee and the Congress, increased the SBA's budget by approximately 2 percent over 1984 spending levels in spite of administration attempts to cut agency funds by 8 percent from those levels.

During the first year (1981) of President Reagan's administration, Congress, acceding to the administration's wishes, passed an extraordinary program of tax cuts, domestic program reductions and massive military spending increases.

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On March 1, 1984, Congressman Parren Mitchell, Chairman of the Committee on Small Business, held hearings to examine the effects of the administration's past and current economic policies on small businesses. The Committee asked the following questions: How have small businesses fared over the past few years; what are their prospects under the economic policies outlined in the President's fiscal year 1985 budget, and are there alternative economic policies that would be more beneficial to small firms?

Chairman Mitchell expressed concern that small businesses would not be able to generate enough jobs for our young people given the high real interest rates small businesses were then paying. In fact, job generation has fallen from an 11 percent gain in the 1977–1980 period to a 7.6 percent gain in the 1981–1984 period. This equals a net slowdown in job generation of 3.3 million jobs.

Real interest rates (nominal rates minus inflation) were at about 10 percent in the spring of 1984, two and one half times the postwar average. Since then real rates have risen to a peak in early September 1984 and then declined slightly, but are still two to two and one half times their historical average of 4 percent above inflation.

Dr. C. Fred Bergsten, Director of the Institute for International Economics, testified that the U.S. trade deficit would reach $120 billion in 1984 and $150 billion in 1985. Dr. Bergsten's prediction for 1984 was correct. He attributed the shocking U.S. trade deficits to the overvalued dollar which, he said, was caused by the administration's combination of restrictive monetary policy and massive deficits. Dr. Bergsten pointed out that a trade deficit of $120 billion would cost 3 million jobs. That is almost exactly the *job creation deficit* experienced over the last four years.

Dr. Bergsten noted that small businesses whose economic welfare is tied to the international trade sector would suffer from the overvaluation of the U.S. dollar, specifically, small businesses in the farm sector, machine tool industry, mining and manufacturing would suffer.

Dr. Leon Taub of Chase Econometrics stated that the high interest rates have a particularly deleterious effect on small businesses because they tend: (a) to be in more precarious financial positions; (b) to have less access to sources of funds; and (c) have fewer opportunities to hedge against unfavorable interest rate movements.

In response to a question asking for their expert opinions on the best economic policy for the near future, Dr. Taub and Dr. Donald Straszheim, Wharton Econometrics, suggested a program of deficit reductions—budget reductions and tax increases—combined with an easing of monetary policy. They stated that this was necessary in order to set the stage for long-term economic growth. Small businesses would obviously benefit from such a program.

Mr. Joseph Duncan, Chief Statistician of the Dun & Bradstreet Corporation, reported that business failures reached a 51-year high in 1983 under President Reagan's administration. Data presented by Dr. Duncan also revealed that the business failure rate reached a 30-year low under Mr. Carter—lower than under any President since Mr. Truman.

A number of witnesses, Travers J. Bell, Jr., Chairman of the Board of Daniels & Bell, Inc., Andrea Mack, National Association of Minority Contractors, and Dr. William D. Bradstreet, visiting professor of economics and finance at Yale University, discussed special problems facing minority businesses. They pointed out (1) that the failure rate of minority firms far exceeded the overall business failure rate, (2) that obtaining credit at reasonable rates and terms was a major problem for small businesses and (3) that equity finance was, for the most part, unavailable to minority firms.

On April 3, 1984, the full Committee heard testimony on H.R. 5298, a bill which provides for the President to convene a White House Conference on Small Business between January 1, 1985, and September 1, 1986. The purpose of the conference is: To identify the problems of small business; to examine the status of minorities and women as small business owners; and to develop specific and comprehensive recommendations for executive and legislative action to maintain and encourage the economic viability of small business and job creation by this sector of the economy.

This bill, which became Public Law 98–276, is patterned after the highly successful 1980 White House Conference. That conference began with some 30,000 participants at 57 State and regional meetings and culminated in a Washington conference attended by 1,700 delegates.

Chairman Mitchell and the ranking minority member, Mr. McDade, jointly sponsored H.R. 5298, along with more than 50 cosponsors. Testimony was unanimously in favor of the bill. Testimony was heard from the Chairman of the Small Business Legislative Council; the President of the Independent Business Association of Illinois; the President of the National Small Business Association and the Chief Counsel for Advocacy of the Small Business Administration.

On April 4, 1984, the full Committee held a final hearing on H.R. 5334, Chairman Mitchell's bill to extend for an additional four years the sunset on the Small Business Development Center program, to authorize the appropriation of such sums as may be necessary to carry out the program, and to make a number of technical and clarifying changes to assist in the program delivery and evaluation. The need for a continued SBDC program was shown by data presented by SBDC witnesses testifying before the Committee as to their operations and accomplishments. Witnesses testifying represented SBDC's in the States of Nebraska, Georgia, Florida, Massachusetts, Pennsylvania, and Wisconsin. The full Committee marked up H.R. 5334 on April 4, 1984, and in subsequent action on that date ordered the bill, as amended, reported to the House by a unanimous vote. The bill became Public Law 98–177.

On April 12, 1984, the Committee held a hearing on legislation to establish a forum for consideration of special needs of women-owned small businesses. Introduced by Rep. Jim Moody (D-Wis.) H.R. 3832, The Women's Small Business Ownership Act of 1984, would establish for a 26-month period, a nine-member National Commission on Women's Small Business Ownership. Membership would include appointments of at least two women each by the President, Senate and House; two of the nine would be "socially

disadvantaged," as defined by Section 3 of the Small Business Act. An amendment offered by Chairman Mitchell provides for special consideration by the Commission of the special needs of minority women business owners. Testimony offered at the hearing confirmed the need for a meaningful data base as well as management and technical assistance geared to the special needs of women-owned small businesses.

On November 28, 1983, the Committee, at the request of Representative Daniel Akaka (D–HI) held a hearing on the problems facing small business in Hawaii. Small business is of vital importance to the economy of Hawaii. Business establishments with one or more employees in 1980 numbered 21,124. Only one hundred had 250 or more employees.

The Committee learned that Hawaii's dependency on small business is not singularly extraordinary among the 50 States yet being separated from the nearest point on the continental United States by 2,500 miles of water presents unique problems. Small business in Hawaii suffers from disadvantages dealing with the Federal Government at all levels ranging from geographical to attitudinal. The omnipresent and possibly most onerous but unavoidable one is transportation costs; and the ever present possibilities of transportation disruption. Second, the limited startup and growth capital available in a high cost State. Third, lack of accessibility to Federal information and assistance. Fourth, the awarding of contracts to mainland firms when local businesses have offered closely competitive or equal bids as well as more immediate availability of services and inventory and first hand accountability. The Committee heard testimony from State officials, representatives of the small business community and their organizations.

Veterans Assistance Hearings

In recent years, there has been increasing interest in how SBA programs can serve the needs of veterans and, in particular, of Vietnam-era and disabled veterans. The Committee has strongly supported efforts to improve the delivery of SBA services to the veteran community. In fact, as long as January, 1974, legislation was approved which provided that veterans were to receive "special consideration" in all SBA programs. Regrettably, this provision, included in Public Law 93–237, was all but ignored in some parts of the country until relatively recently, when additional legislation made it clear that the Congress was willing to reserve funds for the exclusive use of Vietnam-era and disabled veterans.

The new Veterans Administration business loan program was authorized by the Veterans Small Business Loan Act of 1981, Title III of Public Law 97–72, which was approved on November 3, 1981. However, the Reagan Administration has opposed implementation of this program, and as a result no funds have been available since its enactment. Instead, the Congress reserved direct loan funds in the existing SBA general business loan program for the exclusive use of Vietnam-era and disabled veterans. This was first done by Public Law 97–377, approved on December 21, 1982, which set aside $25 million during fiscal year 1983, an amount equivalent to that authorized for the unfunded VA business loan program.

The Reagan administration persisted in its efforts to block funding for this program and froze all SBA direct loan funds by requesting their deferral. This request was rejected by the House on March 10, 1983 with the approval of the impoundment resolution, H. Res. 73. As a result, direct loan funds finally became available. Unfortunately, by the time funds were allocated and instructions were issued to SBA field offices about the new SBA veterans loan program, more than half the fiscal year had been lost; and at the conclusion of fiscal 1983, only $8 million in loans had been approved, or less than one-third of the $25 million which was available.

During fiscal 1984, $25 million was again made available by SBA's regular appropriations act, Public Law 98-166, which was approved on November 28, 1983. Of this amount, $19.7 million in loans were approved. Also an additional $19.2 million in direct loans to Vietnam and disabled veterans were approved through the agency's other business loan programs. SBA's 1985 appropriations act, Public Law 98-411, approved on August 30, 1984, again reserves $25 million exclusively for direct veterans loans.

Although the appropriations process has continued to provide funds for this important program, the Committee believes that a regular multi-year authorization for veterans loans should be enacted to ensure that resources will continue to be reserved for the exclusive use of veterans. The Committee recommended and the House approved by a vote of 386-11 on March 15, 1984 the first separate line-item authorization for SBA veterans loans. This provision, included in H.R. 3020, would have authorized $30 million in direct veterans loans in fiscal 1985 and $31.2 million in fiscal 1986. A similar Senate bill, S. 1323, provided for $25 million in 1985. Unfortunately, a conference to resolve the differences in the two versions of the bill did not meet because of administration opposition, and no new regular authorizations for veterans loans were enacted in the 98th Congress.

In the absence of regular authorizations for SBA veterans programs, the Committee has continued to monitor the agency's use of funds for these purposes. As part of this oversight activity, the Committee held a hearing in Boston, Massachusetts on June 11, 1984 on small business opportunities for Vietnam-era veterans. The Committee received testimony from representatives of various Vietnam veterans organizations and from veterans themselves concerning difficulties they have had in entering the business mainstream and in using programs intended for that purpose. Also appearing were State government officials and representatives of the Veterans Administration, the Small Business Administration, and the Department of Labor's Veterans Employment and Training Service.

Witnesses at the Boston hearing detailed a variety of obstacles confronting the Vietnam veteran in attempting to establish, maintain or expand a small business. These included competitive disadvantages relating to the disruption of veterans' education, employment, and/or financial history due to protracted service in the military; service-related physical and emotional disabilities; lack of capital; inadequate outreach efforts to inform veterans of existing gov-

ernment programs available to them; and inadequacies in the programs themselves.

Many of the witnesses indicated that the qualification standards for SBA's business loans were too stringent and precluded those veterans most in need from participating in this program. Other witnesses were concerned about the shortage and resulting inaccessibility of SBA personnel. Also expressed was concern about the meaning of the "special consideration" to veterans mandated by P.L. 93-237 and whether, in fact, any such consideration is actually given by SBA in the implementation of its programs. Another major complaint was that most veterans who are eligible for and could otherwise qualify for SBA assistance remain unaware of these programs.

Recommendations were made on all of these subjects, and the Committee will continue to work with SBA to address the concerns of the veterans community. Although the agency has made veterans assistance a "priority", it continues to seek the limitation of personnel and outreach funds, as well as the total elimination of direct veterans loans. The Committee opposes these efforts, and will continue to support legislation to maintain and improve SBA services for veterans.

Development Company Financing Hearings

The Small Business Administration's development company programs, originally authorized by Sections 501, 502, and 503 of the Small Business Investment Act of 1958, have been an important source of long-term, fixed asset financing for small businesses for many years. Since the 502 program's inception in 1958, local development companies have provided more than $1.25 billion in more than 8,300 financings; since enactment of the 503 program in 1980, certified development companies have provided more than $730 million in over 3,650 financings which, when leveraged with private sector funds, have resulted in more than $1.8 billion in community development projects.

These $3 billion in development company projects have provided incalculable returns in job creation, increased productivity, innovation and technological achievement. This, in turn, has resulted in expanded sales and profitability for development company clients and in an increased tax base for all levels of government. Still other benefits flow from these programs, such as the reduction of unemployment roles, meaningful job training, diversification of local economies and provision of needed goods and services in underserved communities.

Recognizing the achievements of the 502 local development company program and the potential for even greater results through increased leverage of scarce government resources, the Committee authored and secured enactment of legislation authorizing the 503 certified development company program in 1980. The purposes of the 503 program are essentially the same as those of the older 502 program, long-term, fixed asset financing to help small businesses in plant acquisition, construction, conversion or expansion and in the purchase of machinery and equipment. However, the 503 program's combination of long-term, below market, fixed interest rates and low equity injection requirements together with a first mort-

gage position offered commercial lenders for their 50 percent exposure, has resulted in a financing package of great appeal to both small business borrowers and commercial lenders.

The success of the 503 program is evidenced by its unprecedented growth. In the program's first year of operation, fiscal 1981, 187 certified development company financings were approved for $34.7 million; in fiscal 1982, 476 financings were approved for $81.3 million; in fiscal 1983, 1,348 financings were approved for $269.8 million; and in fiscal 1984, 1,522 financings were approved for $318.0 million. During the same period, Section 502 local development company financings averaged $28.3 million annually.

It is important to note that the $730 million in 503 financings approved so far and the $1.8 billion in projects which they enable were provided at practically no cost to the taxpayer. In fact, because development company funds are unsubsidized, the main costs to the government are relatively minor administrative expenses.

Because all of the $350 million available for SBA's 502 and 503 programs was used in fiscal 1984, the Congress approved an additional $100 million for fiscal 1985, so that $450 million will be available and program demand can continue to be met.

During the 98th Congress, the Committee began an extensive review of the operation of SBA's development company programs to determine how they could be improved. Because most new programs, such as the 503 certified development company program, inevitably need some "fine-tuning" after their first years of operation, the Committee's examination focused, in particular, on identifying any problem areas in this program. The review has included hearings, analysis of statistical data, examination of actual files in SBA field offices throughout the country, and input from SBA and industry representatives.

The Committee's examination has disclosed a variety of issues of concern, although the program has worked very well. The Committee addressed several of these issues legislatively in H.R. 3020, described elsewhere in this report. In that bill, the Committee recommended and the House approved an increase in the maximum combined amount of 7(a)/502 or 503 assistance from $500,000 to $750,000; the reversal of an SBA/OMB policy effectively prohibiting the use of 503 financing in conjunction with tax-exempt revenue bonds; and the allowance of 503 debenture proceeds to be used for working capital in addition to fixed asset financing.

Other technical issues which could be resolved administratively have been the subject of negotiations involving SBA and the development company industry. These include restrictions on the eligibility of small business concerns for program participation, job creation standards, minimum 503 company activity requirements, the eligibility of lease-hold improvements for 503 financing, permissible fees and other issues. In addition to working on these and other technical questions in 1983 and 1984, SBA is planning the first complete revision of 503 regulations in 1985, and it is hoped that the Committee's recommendations will be incorporated when these regulations are finalized.

One area of particular concern disclosed by the Committee's review is the extremely low level of participation in the 503 program by minority-owned businesses. SBA records indicate that,

since the program's inception, only 5.2 percent of certified development company financings have gone to minority-owned businesses. Just as disturbing is the fact that in fiscal 1980, the year before the 503 program began operating, more than 32.7 percent of Section 502 local development company financings went to minority-owned businesses. As the 503 program has grown, the percentage of minority participation in development company programs has steadily declined to a small fraction of pre-503 levels.

The Committee does not believe it is fair to exclude the minority business sector from participation in this important and otherwise successful program in such a wholesale fashion. The 503 program was intended to be a tool to spur economic development and job creation, and certainly minority businesses can play an important role in achieving this goal.

On November 28, 1984, the Committee conducted a hearing in Oakland, California on the participation of minority-owned businesses in SBA's development company programs. Testimony was received from a large number of minority-owned businesses, all clients of the six certified development companies authorized to operate in the greater San Francisco Bay area. These firms were engaged in a wide variety of industries, including the manufacturing, wholesaling, retailing, service and high technology sectors. Also heard at the Oakland hearing were representatives of each of the six certified development companies, the most active commercial lender the 503 program in the Bay area, the National Association of Black and Minority Chambers of Commerce, and the cities of San Francisco, Oakland and Pittsburg, California.

The witnesses' testimony detailed a variety of problems faced by minority business owners in participating in the 503 program and corroborated findings made by the Committee's staff in its examination of the program. The results of these studies will be shared with SBA and the development company industry, and the Committee earnestly hopes that minority participation in the development company programs can be improved without further legislation.

DISASTER ASSISTANCE

The Committee continued intensive oversight of the Small Business Administration's disaster loan programs during the 98th Congress. Much of this activity was conducted in connection with legislative changes in these programs and is discussed at greater length in the section of this report on SBA authorizing legislation.

P.L. 98-270

During the 97th Congress, SBA's physical disaster loan program was greatly compromised by a variety of administrative and legislative changes. The latter were made necessary by the budget process and were enacted in the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35. They included a substantial increase in disaster loan interest rates and restrictions on eligibility. The Act also consolidated six prior non-physical disaster loan authorities into a single "Federal impact" loan program, but it prohibited any funding of nonphysical disaster loans through fiscal 1984, effectively

eliminating this assistance. Two other non-physical disaster loan authorities were repealed.

The Committee monitored the results of these changes closely and, after hearings, analyses of statistical data, staff visits to disaster sites and SBA disaster field offices throughout the country, and input from Members of Congress, disaster victims and others, the Committee determined that significant changes were needed in SBA's disaster programs. The 1981 revisions, made in the name of budgetary necessity, had greatly reduced the programs' effectiveness, were in some cases inequitable, and had made the programs unaffordable for many, causing hardships for the very disaster victims for whom Congress had intended special assistance.

The Committee considered a variety of disaster legislation and eventually recommended a comprehensive disaster package which was included both in the Committee's omnibus bill, H.R. 3020, and (with minor changes) in H.R. 4169, the Omnibus Budget Reconciliation Act of 1984. The package included the simplification and reduction of disaster loan interest rates, an increase in administratively imposed ceilings on disaster home loans, restoration of business disaster loan eligibility in the full amount of uninsured losses, implementation of the "Federal impact" loan program and the creation of a specialized non-physical disaster loan program to help businesses adversely affected by the Mexican peso devaluations and associated effects. A variety of other technical disaster provisions were also included in each bill.

Although conferees did not reach agreement on H.R. 3020 and the bill died with the adjournment of the 98th Congress, the Committee's disaster package was enacted in the Omnibus Budget Reconciliation Act of 1984, approved on April 18, 1984 as Public Law 98–270. Its major changes are summarized below:

(1) Public Law 98–270 lowered the interest rate on all home and personal property loans. Those able to obtain alternative financing pay a formula rate relating to the government's cost of borrowing plus 1 percent, but not more than 8 percent. Those unable to obtain alternative financing pay one-half the formula rate, but not more than 4 percent.

Prior legislation provided no ceilings on the formula rates for borrowers in this category. These rates fluctuate and had been as high as 16 percent for those with alternative resources and 8 percent for those without alternative resources.

(2) Public Law 98–270 lowered the interest rate on disaster loans to businesses without alternative resources to no more than 4 percent.

Prior legislation provided the rate for businesses in this category could not exceed 8 percent.

(3) Public Law 98–270 lowered the interest rate on disaster loans to businesses with alternative resources to the lowest of a) the rate prevailing in the commercial market for similar loans; b) the maximum rate on SBA guaranteed business loans; or c) 8 percent.

Prior legislation provided no 8 percent ceiling for loans to businesses in this category, and rates had been as high as 20.5 percent.

(4) Public Law 98–270 prohibits SBA from arbitrarily setting a ceiling on disaster home loans at less than $100,000 on loans to repair damages to real property, $20,000 on loans to repair or replace personal property, or $120,000 for combined losses.

Prior SBA policy limited disaster home loans to $50,000 for the repair of real property, $10,000 for the repair or replacement of personal property, or $55,000 for combined losses.

(5) Public Law 98–270 provides that business disaster borrowers are eligible for disaster loans in the amount of 100 percent of their uncompensated losses.

Prior legislation provided that business disaster borrowers were eligible for disaster loans of up to 85 percent of their uncompensated losses.

(6) Public Law 98–270 authorizes funding of SBA's "Federal impact" loan program to help businesses adversely affected by government actions or decisions. The 1983 Payment In Kind (PIK) Land Diversion Program administered by the Department of Agriculture is specifically defined as a government action for the purposes of this program. Loans are restricted to businesses without alternative resources. The interest rate is 8 percent.

Prior legislation prohibited funding of this program through fiscal 1984.

(7) Public Law 98–270 created a specialized non-physical disaster loan program to help businesses suffering severe economic injury as a result of the Mexican peso devaluations and associated effects. Loans are restricted to businesses without alternative resources. The maximum amount is $100,000, and the interest rate is 8 percent.

A similar program had been repealed by P.L. 97–35 in 1981.

P.L. 98–166

Public Law 98–270 also extended through fiscal 1986 prior law which provides that most farmers with disaster losses must go first to the Farmers Home Administration for financial assistance unless interest rates on FmHA disaster loans are not substantially similar to those at SBA or those farm businesses are not eligible to apply at FmHA. This provision was first included in the Small Business Act with the approval of P.L. 96–302 on July 2, 1980 in order to accommodate the administration's desire to maximize the number of farmers who would apply to FmHA instead of SBA for disaster assistance. These provisions were only agreed to with the understanding that farm businesses were to have the same disaster assistance available to them as non-farm businesses, and that those not eligible at FmHA would be eligible at SBA.

The Committee's oversight activities have disclosed that SBA has repeatedly refused to honor the intent of these provisions, and has placed a variety of administrative obstacles in the path of farmers seeking disaster assistance at SBA, even within the limited circumstances contemplated by P.L. 96–302. A bewildering series of new regulations, counsels' opinions and policy memoranda to field offices, aimed largely at eliminating any possible eligibility of farm businesses for SBA disaster assistance, has resulted in many farmers being ineligible for assistance at either FmHA or SBA.

As an example, the SBA has adopted a policy which precludes disaster assistance to most farm producers who are ineligible at FmHA, in direct contravention to the intent of the authors of the farm disaster provisions of P.L. 96-302. SBA currently refuses acceptance of applications for disaster loans from these individuals unless SBA also has made a disaster declaration.

Because SBA has not made "farm disaster" declarations since the enactment of P.L. 96-302, this policy has resulted in the situation in which farm businesses ineligible for disaster assistance at FmHA have no place to turn for help unless their damage was incidental to a disaster in which sufficient damage was suffered by non-farm businesses or homeowners to result in a SBA disaster declaration. Because "farm disasters" and "non-farm disasters" are not usually concurrent, either with respect to incidence or location, few farm producers who are ineligible at FmHA could ever apply for assistance under these circumstances. In fact, SBA has made only a handful of disaster loans to farmers with crop production losses resulting from disasters in which the provisions of P.L. 96-302 were in effect.

This SBA policy on farm disaster eligibility was overturned for disasters commencing between January 1 and September 30, 1983 (including the severe drought in the South and Midwest) by a provision included in the agency's 1984 appropriations act, Public Law 98-166. The appropriations conferees made their position clear in the conference report on this legislation:

> The conferees restate the basic premise that all farm businesses and non-farm businesses with qualifying disaster losses be afforded assistance at substantially similar interest rates whether at FmHA or SBA. The conferees expect that SBA will make its disaster loan program available to farm disaster victims ineligible at FmHA who would have been eligible had SBA been administering the program, and that it will do so without the requirement of a specific "disaster declaration" by SBA when one has been determined by FmHA. The requirement for such a declaration is duplicative of the declaration already made by the Secretary of Agriculture in such situations; is inconsistent with longstanding practice in SBA's economic injury loan program where agricultural disaster declarations automatically trigger SBA assistance; and serves only to discriminate against businesses which happen to be in the business of producing food, but do not fit neatly within the description of FmHA's eligibility for other programs.

The Committee will continue to monitor SBA's implementation of the farm disaster provisions of the Small Business Act and will consider additional legislation to enforce the intent of its authors if SBA continues to evade its responsibilites in this area.

P.L. 98-473

Another persistent problem with SBA's implementation of disaster legislation has been the agency's refusal to publish regulations in a timely fashion and its drafting these regulations in such a way

so as to minimize the amount of assistance which could be provided. The agency's response to P.L. 98-270's reopening of the non-physical disaster program is an excellent illustration.

On April 18, 1984, P.L. 98-270 removed the prohibition of funding which had been placed on SBA's "Federal impact" loan program by the Omnibus Budget Reconciliation Act of 1981. Although this program had been "dormant", SBA on October 1, 1983 had finalized regulations for its eventual implementation as part of a complete revision of all disaster regulations. P.L. 98-270 had made no major changes in this program, authorized under Section 7(b)(3) of the Small Business Act; the funding prohibition was lifted, a $100 million program level was set, and the eligibility of businesses adversely affected by the PIK program was clarified. Although SBA had finalized regulations to implement the 7(b)(3) program only six months before the enactment of P.L. 98-270, the agency determined new regulations would be needed.

These new proposed regulations were not published for comment until August 21, 1984. When they finally did appear, they included a requirement that a Governor certify that at least 25 businesses in a given county meet certain minimum damage requirements before any business in that county could apply for assistance.

This same "loss threshold" requirement was proposed in regulations to implement the Currency Fluctuation Loan Program, also authorized P.L. 98-270, to help businesses adversely affected by the Mexican peso devaluations and associated effects. These regulations were not published for comment until August 14, 1984.

These restrictions were unprecedented and were not intended by the Congress. The proposed standards were inequitable, bore no relation to the economic injury of individual applicants, were duplicative of eligibility determinations already made on each applicant, posed enormous administrative burdens on State governments, and served little purpose except to deprive economic injury assistance to those for whom the Congress intended it.

The regulations appeared to have been deliberately designed to render useless the two non-physical disaster loan programs authorized by P.L. 98-270, over the administration's objections. The rules would have virtually eliminated any assistance under the 7(b)(3) program and would have limited 7(b)(4) assistance to a handful of heavily populated border communities.

As a result of this situation, additional legislation was included in the 1985 Continuing Resolution, P.L. 98-473 (approved on October 12, 1984) which prohibits SBA from making eligibility for Federal impact loans or currency fluctuation loans in any way dependent on a minimum number of businesses suffering losses. Each case must be considered on its own merit. Other provisions in P.L. 98-473:

(1) Make disaster loans available to small businesses in the West Coast fishing industry which suffered economic injury due to the severe weather conditions known as El Nino;

(2) Increase Governors' ability to certify disaster-related economic injury to businesses not located in declared disaster areas, thus making them eligible for disaster loans; and

(3) Require SBA to treat small agricultural cooperatives the same as similar small businesses in providing disaster loans.

ECONOMIC REVIEW OF SMALL BUSINESS PROBLEMS

The House Committee on Small Business and its constituent subcommittees provide an ongoing review and summary of the economic impact on small businesses of legislation and Federal Government policy decisions. The review includes a wide range of issues of importance to the small business community. Following is a partial listing:

Economic Outlook.—The Economic Outlook is a quarterly issue brief summarizing the major econometric forecasts and analyzing the impact of economic changes on small businesses.

Following is a brief summary of how small businesses and the economy have fared over the past several years.

Interest Rates.—Real interest rates charged to small businesses and farmers (the cost of money after subcontracting inflation) are at their highest levels since the Great Depression. Small businesses and farmers are still paying interest rates nearly 10 percentage points above the rate of inflation. Historically, small businesses and farmers paid 2 to 5 percentage points above inflation. In the past three years small business and farm interest rates have averaged over 11 percentage points above inflation; double the 1980 level and three times the average 1977–1980 level.

Business Failures.—In 1983, both the number and rate of business failures as reported by Dun & Bradstreet reached a 51-year high. This is particularly surprising as business failures reached a 30-year low in 1977–1980 period. The high rate of business failures is a result of the long 1981–1982 recession combined with the extremely high real interest rates noted above. The high rate of business failures has continued into 1984. As of November 16, 1984, business failures had declined only 10.5 percent from the 51-year peak in October, 1983.

Net Farm Income.—Net farm income is predicted to remain weak through 1986 by both Chase and Wharton. During the past several years, farmers have suffered the largest sustained decline in net income since the Great Depression. During the 1949 through 1984 period, net farm income in inflation adjusted 1967 dollars averaged $13.9 billion per year. From 1981 through 1984, net farm income will average $8.1 billion per year or 42 percent below the postwar average. Chase predicts that net farm income will decline in 1985 and 1986. It is this sustained decline in the earning potential of agricultural land that has lead to the drastic fall in farm land values and the subsequent financial problems of thousands of previously successful farmers. The "strong" dollar will continue to hold down farm income far below postwar averages. Given these income prospects, the debt crisis in agriculture can be expected to continue.

Small Manufacturers.—Although the manufacturing sector has made a strong recovery, data from the Quarterly Financial Reports (U.S. Department of Commerce) indicate that the long recession left many smaller manufacturers in fragile financial condition. On several measures of financial soundness, small manufacturers (those with $25 million or less in assets) are in much more precarious financial positions than large firms (those with $100 million or more in assets). For example, the ratio of cash flow (net profit, depreciation, depletion and amortization) to current payments due on

long-term debt is much worse for small manufacturers (0.930 in the 4th quarter of 1983) than large manufacturers (2.959). The ratio is a measure of businesses' ability to service long-term debt. A ratio of less than one means that the current payments due on long-term debts exceed cash flow. The ratio for small manufacturers has been below one since the fourth quarter of 1981. The ratio for the average large manufacturer never fell below 2.45.

Small Retailers.—Small retailers' share of retail sales has declined since 1979 and 1980. In constant 1967 dollars, their sales are at the 1980 level and below 1979's peak. Small retailers (those with 10 or fewer retail outlets) had sales of $767 billion in 1983. In real dollars (after adjusting for inflation with the consumer price index), this equals $257 billion—$0.8 billion above the 1980 level, but still $14.1 billion (5 percent) below the 1979 level. As a share of all retail sales, small retailers' share declined from a high of 66.2 percent in 1978 to 66.1 percent in 1980 to a low of 63.8 percent in 1982. In 1983, the small retailers' share rose to 65.3 percent of all retail sales. The decline in small retailers' sales has contributed to the high rate of failures in retailing. Additionally, the continuation of high interest rates, has forced retailers, particularly smaller retailers, to keep inventories to a relatively low level.

New Incorporations.—New incorporations have been rising at an average rate of 4.2 percent per year over the last three years; 1981–1983. The trend rate of growth was 5.3 percent in the 1960 through 1983 period. In the 1977 through 1980 period, new incorporations grew at an annual rate of 9.2 percent—far above trend. The growth of new incorporations has been below trend the last four years.

Housing Investment.—In the 1981–1984 period, housing investment (in constant 1972 dollars) fell to $198.9 billion—13.3 percent below the 1977–1980 level and the lowest four-year level since the 1965–1968 period. Housing starts, another measure of housing investment, declined nearly 20 percent from the 1977–1980 period. Housing starts are at their lowest level for any four-year period since 1965–1968. On average, housing starts are at a level only slightly above the 1950's and early 1960's levels when the U.S. population was much smaller. Housing investment is predicted to decline in 1985 and 1986 as mortgage rates rise.

Net Investments.—In spite of the sharp increase in business investment in 1984, net investment as a percentage of GNP is lower than all but 2 nonrecession years since 1948. Net investment as a percentage of GNP is a measure of how much our society sets aside for the future. It is equal to gross investment minus actual depreciation of plant and equipment.

In the 36 years since 1948, new investment as a percentage of GNP has averaged 6.4 percent per year. In the 23 nonrecession years since 1948, it has averaged 7.2 percent of GNP—by this measure, the current rate of new investment is 1.2 percent of GNP (or $44 billion) below average.

Both Chase and Wharton predict that investment will rise in 1985. However, high interest rates and a slowing economy will begin to curtail investment in late 1985 and early 1986.

Savings.—Personal savings has not responded to the many savings incentives enacted over the past few years. In spite of All-Savers Certificates, Individual Retirement Accounts, Keogh plans,

lower tax and deregulated interest rates, personal savings remains at about 6 percent of disposable personal income.

Business savings are leveling off as the growth in profits slows. Consequently, as a percent of GNP, net savings (gross savings minus actual depreciation) will average 3.9 percent of GNP in 1984—far below the postwar average of 6.4 percent. Furthermore, during the 23 nonrecession years since 1948, net savings averaged 7.1 percent of GNP. By this measure, the percentage of GNP set aside for the future in 1984 (3.9 percent) is far below average.

The cause of the low rate of net savings is the high level of Federal deficits, or dissavings. The table below illustrates the problem. Net private savings as a percent of GNP is quite large before Federal deficits are subtracted. Once the Federal deficit is subtracted from private savings, the percent of GNP left for net investment is very small.

DOMESTIC SAVINGS—PERCENTAGE OF GROSS NATIONAL PRODUCT (GNP)

	Percent	
	1984	1985
Net private domestic savings (percent of GNP)	8.6	8.1
Federal deficits (percent of GNP)	4.7	4.4
Domestic funds available for investment (percent of GNP)	3.9	3.7

Only the inflow of foreign capital has allowed the U.S. to achieve a net investment rate of 6 percent of GNP in 1984. It is not possible for the U.S. or the world to sustain such a transfer of capital for long.

TAX ISSUES

In an effort to partially reduce the huge Federal budget deficit, the Congress enacted into law, another major piece of tax legislation the Tax Reform Act of 1984 (TRA). Previously, the Congress passed the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) as a means of reducing the Federal deficit and scaling back some of the generous tax benefits that were conferred on the business community by the Economic Recovery Tax Act of 1981 (ERTA). Unfortunately, the small business community who received the least amount of the tax benefits conferred by ERTA had to bear a larger portion of the tax burden that was imposed by TEFRA. The TRA of 1984 impact on the small business community was very similar to TEFRA in this respect.

The Secretary of the Treasury, Donald Regan, recently unveiled an elaborate tax simplification plan that would presumably lower individual rates but eliminate many familiar deductions, credits and exemption while shifting the tax burden back somewhat from individuals to corporations. The Treasury Department's tax reform proposals unveiled has drawn sharp criticism from certain industries because of tax benefits such as the Investment Tax Credit (ITC) and the scaling back of the Accelerated Cost Recovery Depreciation System (ACRS) that was enacted in 1981. Industry spokesmen argue that eliminating ACRS and the ITC would increase the

cost of capital invested in assets that qualify for them, slow the rate of economic growth and lead to higher unemployment. Critics of these two tax provisions argue that they distort investment by benefitting some industries far more than others. While both of these arguments merit consideration, they are relatively meaningless for a large segment of the small business community which are struggling to survive. Until Federal tax policy is focused on the special needs of entrepreneurs, these policy debates are of little significance to the small business community. Federal attention to entrepreneurial and activity new ventures is relatively small compared to that given to ongoing businesses (i.e. small and large corporations). Consequently, some businesses that were ready and worthy of starting do not actually get under way; latent entrepreneurs who could be encouraged by public policy into starting new companies instead follow other paths which may not be creative. This can be economic waste on a national scale. Today's start-up business has a chance of becoming tomorrow's corporate giant. Lost is the economic impact of thousands of new businesses (never started) which could have created jobs and added to the National output.

While there are many exising policies that would help established or existing businesses as well as entrepreneurs, entrepreneurs require special policies to assist them. These policies should be structured to meet their requirements, namely programs which help qualified "outs" become "ins" of business ownership, in contrast with programs that simply service existing businesses. Entrepreneurs increase competition, challenging existing firms. They seek niches where there are unsatisfied needs in the marketplace, transfer technology, create new ideas and implement them, induce investment and bring with it new jobs.

Tax rules have been powerful tools for stimulating investment, whether in oil drilling, housing development, and etc. consequently, there have been several tax initiatives that have been enacted into law to stimulate business activity. Unfortunately, most of these tax incentives have primarily benefitted existing businesses. Most of these provisions assist existing businesses by providing them with tax incentives to retain capital as opposed to tax incentives that would attract investment capital to start new businesses.

The policy debates over tax reform or simplification hopefully will serve as a basis to enact tax incentives in the 99th Congress that will assist entrepreneurs starting new businesses.

INVESTIGATIONS AND OVERSIGHT

CONTINUING CONCENTRATION IN MEAT PACKING INDUSTRY

In the 96th and 97th Congresses the Committee conducted extensive investigations of meat marketing and the meat packing industry. During the 98th Congress, the Committee continued to monitor the economic structure of the meat packing industry with special concern for the future role of small businesses in this vital sector. Summary results of this effort appear in the following paragraphs.

The rate of decline in the number of firms reporting steer and heifer slaughter has doubled since 1979. The figures made available

to the House Committee on Small Business leave little doubt that the trend toward fewer firms in the steer and heifer slaughter industry, documented in earlier Committee hearings and staff reports, is continuing at an accelerated pace. As scores of firms have left the industry the market share of the remaining firms has increased dramatically. If the current trends continue unchecked, by 1995 there will be only 8 firms left in the industry.

It is clear from the newly released data that the four largest firms slaughtering steers and heifers have moved past the point—measured by market share—where earlier testimony indicated they could exert monopoly power to inflate their selling prices and exert monopoly power to depress the price they pay farmers for cattle.

In the West North Central Region, which accounts for over 50 percent of the Nation's steer and heifer slaughter, the concentration of economic power—as measured by the market share of the 4 largest firms—has reached the point where earlier Committee testimony indicated control over prices charged and prices paid was at its peak.

Selected State data show that since 1972, the number of firms reporting steer and heifer slaughter in Iowa has dropped by 50 percent.

The market share of the 4 largest firms slaughtering steers and heifers in Iowa in 1982 was over 85 percent, up 18.5 points since 1972. Such high levels of concentration leave little doubt that the steer and heifer slaughter industry in Iowa has become so dominated by four or fewer firms that there is little or no market left for efficient small or medium sized packers.

The growth in market share and dominance by the four largest firms has been equally dramatic in other leading cattle States such as Texas, Kansas, Colorado, Idaho and Washington

In 1982 boxed beef accounted for 58 percent of the steer and heifer slaughter.

Growth in boxed beef production since 1979 is almost completely accounted for by the expansion of the four largest firms. These four firms held a 66 percent market share of boxed beef production in 1982.

At the state level, the top four firm's market share exceeded 90 percent in all the leading boxed beef States.

Newly released data support the hypothesis that the hog slaughtering industry in 1982 was in about the same relative position with regard to concentration of economic power in the hands of a few firms as the steer and heifer slaughter industry was in 1979.

Legislation

As a result of Committee studies of the meat packing industry, Congressman Neal Smith introduced legislation (H.R. 405) to assist small businesses in the meat packing industry and to protect these businesses against unreasonable use of economic power by major meatpacking companies. The bill was referred jointly to the Committees on Agriculture and Small Business, which took no action.

Other legislation dealing with agricultural marketing problems and the effects on small businesses included: H.R. 398 to amend the Commodity Exchange Act to require a producer referendum as a condition of designation of certain futures markets, by Congress-

man Neal Smith, referred to the Committee on Agriculture which took no action; H.R. 400 to amend the Commodity Exchange Act to require public disclosure of certain information relating to sales of commodities for export, by Congressman Neal Smith, referred to the Committee on Agriculture, which took no action; H.R. 404 to clarify the eligibility of certain small businesses for loans under the Small Business Act and to aid, protect, and preserve small businesses in meat production and marketing, referred jointly to the Committees on Agriculture and Small Business, which took no action.

SUMMARY OF FOOD MANUFACTURERS STUDY

Food manufacturing is one of America's largest industries—contributing over $75 billion to value added in 1980. This was 2.5 times the value added by the automobile industry in 1980. Food manufacturing has traditionally been an industry where local small businesses can efficiently compete to produce safe and wholesome food. In 1977, 56 percent of the firms in the food manufacturing industries had fewer than 10 employees and 98 percent had fewer than 100 employees. However, in recent years thousands of small food manufacturers have closed their doors. According to Census data, over the period 1967 to 1977 while the number of all United States manufacturing establishments increased by 16 percent, the number of establishments in food manufacturing dropped 18 percent from 32,518 to 26,656. Food and kindred products is the only major manufacturing sector where the number of establishments have declined significaintly over the ten year period. Even sectors such as textiles and steel showed growth in the number of firms of 2 percent and 8 percent respectively. If present trends continue food manufacturing may be an industry in which the small business can no longer compete effectively

In the spring of 1981 the House Committee on Small Business, in cooperation with the Food System Research Group of the University of Wisconsin, undertook an economic analysis of food manufacturing industries. The objectives of the analysis are to determine:

(1) Structural trends and the relative importance of small and large companies.

(2) The critical factors affecting the ability of small companies to survive and compete effectively.

(3) The extent to which national brand food manufacturers and small businesses are engaged in the manufacture of private, controlled, and generic label products and trends in this regard.

(4) The factors affecting national brand-private label price spreads and changes in these prices over time.

(5) The future organization of food manufacturing industries, the expected role of large and small companies, the impact on consumers and labor, and the policy measures that these economic conditions may warrant.

In November 1982, the Committee sent approximately 3,000 questionnaires to firms of all sizes to gather data on 52 product lines. The Committee has gone to extraordinary lengths to encourage voluntary response. The original survey was pilot tested and reduced

in length by one-third. By incorporating suggestions of the Grocery Manufacturers of America, the most time consuming and sensitive questions were eliminated.

In February and May 1983 the first and second non-response follow-ups were conducted. In June 1983 a one-page summary questionnaire was mailed as an additional non-response follow-up. In July 1983 a final non-response follow-up letter was mailed to large companies whose response is vital to the success of the project.

The overall response rate has been 20 percent. The response rate from large companies has been so low (one-half that of small companies) that it is not possible to rely on the data now collected in 46 out of 52 product lines. Twenty-one product lines were dropped from the study because of the low response rate. Of the remaining 31 product lines enough data have been collected to draw statistically valid conclusions in only 6 product lines. The remaining 25 product lines are primarily manufactured by 13 large companies that have refused to respond to the Committee questionnaire If data are obtained from these 13 key companies than statistically valid conclusions could be drawn for 31 of the original 52 product lines. The Committee has received completed questionnaires from scores of large companies that exemplify voluntary cooperation and point out that the questionnaire was not overly burdensome. Also, the response of these large companies is indicative of a confidence that the individual responses will be kept confidential.

Several efforts have been made voluntarily to obtain data from the 13 key companies. Letters, telephone calls and an invitation to present the data at a Committee hearing have all gone unheeded. In fact, 9 of the 13 companies have not even responded to letters from the Chairman.

This project represents the only comprehensive look at the food manufacturing industry since the National Commission on Food marketing in 1965. Its successful completion will be an important step forward in the Committee's knowledge of this industry. The Committee and the University of Wisconsin have already expended considerable resources on this project. The Committee has received completed questionnaires from 456 small and large businesses. Unfortunately, without the response of the 13 key, large companies the voluntary response of these 456 other businesses will be of little or no statistical value.

THE IMPACT OF CHANGES IN THE TELECOMMUNICATIONS INDUSTRY ON SMALL BUSINESSES

In a recent survey, small businesses stated that rising local telephone rates were one of their top four problems. Local telephone rates will continue to rise sharply in the next few years as a result of massive and continuing changes in the telecommunications industry.

On May 23, 1984, Congressman Parren J. Mitchell, Chairman of the Committee on Small Business, established a Task Force to investigate the impact of telephone rates and charges upon small businesses and to report its findings and recommendations to the full Committee by November 30, 1984. The Task Force was comprised of Representative Ron Wyden (D–OR) as chairman and the

following eleven members: Representatives Berkley Bedell (D-IA), Ike Skelton (D-MO), Charles W. Stenholm (D-TX), Romano L. Mazzoli (D-KY), Buddy Roemer (D-LA), Jim Cooper (D-TN), Vin Weber (R-MN), David Dreier (R-CA), Toby Roth (R-WI), Sherwood L. Boehlert (R-NY), and Michael Bilirakis (R-FL). A series of five hearings were held by the Task Force around the country including hearings in Seattle, Kansas City, and Nashville. Dozens of small businesses and small business representatives testified about their problems concerning rising telephone costs.

Phone bills for hundreds of thousands of small businesses are rising sharply. Many of these small businesses—already faced with limited capital and escalating costs—are struggling to survive. Recent changes in the telephone industry are a major factor in these rising costs. In January 1982, the U.S. District Court of the District of Columbia broke up American Telephone and Telegraph (AT&T), into eight small companies—one providing long distance service; the other seven, local service. Aggressive new companies, fueled by new technologies, immediately moved in, challenging AT&T's control of the long-distance market. Meanwhile, the local telephone companies requested more than $10.9 billion in local phones rate hikes due, in part, to modernization of depreciation schedules and other changes. Many local carriers have sought approval to begin charging for local service much as long distance service is currently charged for—by duration of call, time of day, and distance. In addition, the Federal Communications Commission (FCC) ordered the shift of billions in telephone service charges from long distance tolls to local telephone users, through what is commonly called the end-user access fee.

For a large percentage of small businesses, these changes have proven painful. Many large corporations which are heavy long distance users came out ahead; for them, local rate increases could be offset by reductions in long distance rates. Residential customers and single line businesses, meanwhile, won a delay in the implementation of the access fee until July of 1985.

It is not surprising that small businesses came out as the losers in the telephone industry changes. The Committee found that the FCC made virtually no attempt to examine small business usage patterns or special needs, or to in any other way ascertain the impact on them of the access charges or other changes in the telephone industry, before imposing the new costs on small businesses. The Committee has also found that, barring legislative or administrative action, many of the pricing changes in the telecommunications industry are likely to have a detrimental effect on small businesses.

Equal Access to Justice Act

One of the top priorities of the small business community has been the reauthorization of the Equal Access to Justice Act (Title II of Public Law 96-481; H.R. 5479, 96th Congress). The Act was sunset at the end of fiscal year 1984. The Act was designed to allow individuals and small businesses to be reimbursed for their court costs and associated expenses if they are successful in an action with the Government, unless it is shown that the Government was substantially justified in its claim or that special circumstances

would make such an award unjust. The Act responds to a chronic problem small business owners have had contesting the unreasonable exercise of Government authority because of the time and expense required to challenge the vast resources of the Federal Government. The legislation was designed to cause agencies to be more deliberative in their regulatory activity.

The Subcommittee on SBA and SBIC Authority and General Small Business Problems held three days of hearings on this bill in the 96th Congress. During these hearings testimony was received in support of this bill from individual small business owners who have encountered difficulties with the Federal Government, trade associations, and other private and Government witnesses.

Throughout the hearings the Committee heard numerous examples of Government actions against individual small business owners that were indefensible. Many witnesses stated that they had been frustrated by the maze of the agency review processes. All too frequently, the review process of an agency was unknown to the private citizen. Consistently, the Committee was told of agency insensitivity to the problems of the small business community. Without exception, small business owners indicated this legislation would be beneficial to them and would enable many of them to better defend themselves and fight unwarranted Government charges that previously have gone unchallenged.

During the last two decades there has been an unprecedented expansion of Government regulation of small business. This, in turn, has dramatically increased the number of administrative and judicial proceedings brought against small businesses by Federal agencies. Due to small business' limited resources and the Federal Government's inexhaustible assets there is obvious inequality in dispute resolutions. This has created a case resolution system that, for a small business, is based almost exclusively on economic criteria rather than what is right. The result is an unbalanced regulatory enforcement system that emphasizes, virtually to the exclusion of all other issues, the cost of potential litigation.

When an individual or small business is required to defend against an unreasonable Federal action, the disparity in the resources each brings to the dispute is enormous. This strikes at the essence of the rule which requires each to bear the burden of the costs independently. Small business owners, if confronted with a regulatory dispute with the Government, routinely pay fines and/or sign consent orders, however unjustified or unreasonable. Similarly put, regardless of the merits of the situation, it is cheaper for the businessman to give in than it is to fight the Federal agency. This type of action, based solely on the cost of fighting back, seriously undercuts our system of justice. Further, the cost of vindication routinely exceeds the amounts at stake.

It must be noted that the real aim of this legislation is not to spend great sums to pay the costs of fighting unwarranted Federal action and this has been the case. Rather, it is intended that the Act will force the Federal departments and agencies to substantially improve the quality of their enforcement and other proceedings. But let there be no mistake, your committee clearly intends that where a small business or individual prevails against the Government either in toto or in substance, reasonable costs and fees shall

be paid to him unless the Government can show that its action was substantially justified.

The 98th Congress acted to make this program permanent and to reauthorize the Equal Access to Justice Act by approving H.R. 5479. The Small Business Committees and the Judiciary Committees of Congress were then, and continue to be, concerned that the cost of litigation deters persons and small businesses from challenging unjustified or unreasonable government action. The Act has proved its worth in its three year probationary period, but has not reached its full potential. The revisions in H.R. 5479 to clarify certain provisions were necessary and will strengthen and help fulfill the promise of equal access.

Earlier criticism of the potential cost of this legislation proved to be unfounded. Awards under the Act have been less than one percent of the original estimate with incalculable savings to small concerns through the Act's deterrent effect on arbitrary government action. Unfortunately, the President vetoed the reauthorization. Action in the 99th Congress to provide small business one of its top priorities will be forthcoming.

CHAPTER 7.—SUMMARY OF SUBCOMMITTEE ACTIVITIES

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

Chairman Mitchell began the Subcommittee hearing schedule with a series of hearings on legislation to modify the Small Business Administration's Capital Ownership Development Program. Hearings on H.R. 863 were held on April 19 and 20, 1983.

H.R. 863 was introduced by Chairman Mitchell on January 25, 1983. The purpose of this measure was to amend the Capital Ownership Development (CoD) Program to redirect its purpose to promoting the competitive viability of small business concerns owned and controlled by the socially and economically disadvantaged.

H.R. 863 would establish "criteria of competitiveness" in each major business area of finance, management and marketing. The length of program participation would depend on a firm's progress—or lack of progress—as measured by these criteria. If a firm successfully achieves most of its criteria, it would be graduated, but if it failed to make an adequate amount of progress against these criteria, it would be terminated from program participation.

In addition, H.R. 863 would provide that a firm participating the the CoD program could not be denied or "suspended" from program participation without first being afforded an opportunity for a hearing, on the record, according to the terms of the Administrative Procedure Act. This section of the bill would, therefore, assure the CoD firm access to an impartial reviewer of fact to determine whether program "exit" criteria have been met.

Finally, H.R. 863 would provide that when computing size, SBA shall not include gross receipts and employment attributable to the performance of 8(a) contracts. Size standards, generally, are designed to screen out the more powerful firms from the less powerful. It is, therefore, simply not logical to enter 8(a) sales into this equation since they are not indicative of competitive strength and will result in premature program exits—before the firm becomes competitive—thereby defeating the purposes of the CoD program.

While H.R. 863, as described above, was reported favorably by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on May 4, 1983, the bill was substantially amended at a full Committee meeting held on May 10, 1983. The text of the amended version was added as section 208 of H.R. 3020.

On April 21 and 27, 1983, the Subcommittee held hearings on newly-introduced small business job creation legislation, H.R. 2132, and on omnibus legislation rewriting the Small Business Administration's Fiscal Year 1984 and 1985 authorizations to support this initiative. SBA's Administrator Sanders and small business associations testified before the Subcommittee.

The hearing focused on the unemployment statistics. The first quarter 1983 figures showed nearly 16 million Americans are out of work, or 15 percent of the civilian labor force, including discouraged workers and other job seekers. Business failures in the first quarter of 1983 set a new post World War II record. There were 7,132 failures in the first quarter of 1983 compared to 2,535 failures for the same period in 1980 and 5,707 failures for the first quarter of 1982. More businesses failed during the first 27 months of the administration than in the previous five years.

Small and medium-sized firms need massive amounts of credit to participate in the projected economic recovery and the country needs the thousands of new jobs these businesses will generate. Concern was expressed over administration policy which has reduced the number and dollar volume of SBA's direct and guaranteed loans by almost fifty percent from 1981 levels. A field hearing on H.R. 2132 and job creation initiatives was held by the Full Committee in Raleigh, North Carolina on April 11, 1983. Governor Hunt and many small and disadvantaged businesses testified.

The hearings found that small and minority business could lead the recovery by creating jobs and provide the means for training new employees for these jobs.

Planning to report numerous pending bills as part of the omnibus legislation, H.R. 2132, pending before the Subcommittee, the Chairman, on May 3, 1983, held hearings on proposed legislative remedies for small business owners facing disaster during the current economic crisis. Testimony was received from House Members supporting small business disaster relief legislation. Testimony was received in support of revitalized activity under SBA's Physical Disaster Assistance Program and the inactive Non-Physical Disaster Loan Program. Testifying on behalf of legislative relief to small businesses along the U.S.-Mexico border, Reps. Morris K. Udall (D-Ariz.) cited severe economic dislocation of small businesses as a result of peso devaluations. He testified in favor or reinstatement of the old, pre-1981 SBA non-physical disaster loan program, and making it specifically applicable to economic dislocation arising from foreign currency devaluations. Similar proposals were introduced by Reps. Abraham Kazen, Jr. (D-Tex.) and E de la Garza (D-Tex.). Others testifying before the Subcommittee were Reps. Ronald D. Coleman (D-Tex.); Solomon P. Ortiz (D-Tex.); Leon E. Panetta (D-Calif.); Barbara Boxer (D-Calif.) and Sam Gejdenson (D-Conn.).

Surety Bond Guarantee Program

The Subcommittee held a hearing on May 17, 1983 on the Surety Bond Guarantee Program (SBG) administered by the Small Business Administration pursuant to title IV of the Small Business Investment Act of 1958. Witnesses included minority business trade organizations, minority contractors, business experts, and representatives from various government agencies and departments.

The primary purpose of the SBG program is to entitle SBA to extend a guarantee against loss to a surety in order to make bonding available to public and private small business contractors if a bond is not obtainable under reasonable terms and conditions by private sureties. To this end, SBA is authorized to guarantee up to 90 percent of losses sustained by a surety as a result of the issu-

ance of bid, payment, or performance bonds. However, SBA may not guarantee any contract whose face value exceeds $1 million. Practically speaking, the real beneficiaries of this program are the small and minority contractors who would be unable to secure bonding from a surety without a guarantee by SBA. Invariably, it is the assistance provided by the SBG program that becomes of critical importance to small and minority contractors who are capable of performing the contract but lack the track record and experience required by standard sureties.

This hearing was prompted by the indisputable fact that minority contractors, particularly, continue to be effectively prevented from obtaining larger projects which are vital to market expansion. The Committee is well aware that the inability to obtain bonding is a definite hindrance to growth. Moreover, the inability of minority contractors who are alleged to have defaulted on contracts to obtain bonding assistance stifles growth altogether.

With specific reference to the Surface Transportation Assistance Act of 1982 (Public Law 97-424) and other legislation designed to set-aside construction contracts for minority firms, this hearing focused attention on the fact that it is useless for Congress to legislate construction set-aside programs for minority contractors when these very same contractors cannot obtain bonding assistance from either private sureties or the Federal Government.

Generally, testimony presented at this hearing revealed that (1) there is a lack of marketing of the SBG program by SBA resulting in potential contractors not knowing that this program exists; (2) there is a lack of understanding of program fundamentals by program recipients including the surety companies and agents; (3) since 1981, SBA has taken a series of measures to restrict bonding under the program which was already below the authorized limits established by Congress; (4) despite the fact that the program was basically designed to assist small business entrepreneurs who lack the management and financial resources to qualify for bonding assistance in the standard market, the program's participant criteria are the same as those in use by the standard market; and (5) there is an overwhelming lack of participation in the program by standard sureties.

Other testimony presented at the hearing revealed that there is an alarming increase in the number of occasions where minority contractors have been held in breach of contract, after completing a substantial portion of the project, without appropriate government investigation to varify the breach. This type of situation has resulted in the unwarranted lost by the contractor of profits under the contract and the inability to obtain future SBA guarantees.

The scope of the hearing covered the necessity of adequate bonding availability to small business concerns seeking public contracts through Chairman Mitchell's ten percent set-aside provisions of the Surface Transportation Assistance Act of 1982, Public Law 97-424.

On July 6, 1983, the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems and the Senate Committee on Small Business held a joint oversight hearing on the U.S. Small Business Administration's Small Business Development Center (SBDC) Program. The Committee's investigatory field hearing held in Seattle, Washington was to determine the

type and quality of assistance small concerns have been receiving. Testimony was received from University operated SBDC's which use State and Federal grants to maintain full-time staffs able to help small concerns with a wide range of problems. Small concerns receiving such assistance also testified. SBDC's leverage government resources by drawing together university and private sector counselers experienced in providing management and other assistance to small businesses. Small concerns testifying enthusiastically supported the SBDC concept, stating that small business needs this type of hands-on problem solving and business strategy assistance to foster innovation and growth, increase productivity and improve management. The Subcommittee held a second oversight hearing on the SBDC program in Atlanta, Georgia on August 30, 1983 and on December 9, 1983 a final field hearing on the program in Columbia, South Carolina.

Small Business Development Center Program

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Size Standards

On October 20, 1983, the Subcommittee began its hearing on the Small Business Administration's proposed size standards published in the *Federal Register* on May 6, 1983. The hearings continued on October 26, 1983. The purpose of the hearings was to ensure the equity of procedure used by SBA in defining size standards and to ensure that no standards are adopted which will thwart the congressional intent of various small business programs. Witnesses included representatives of small business trade organizations, business concerns of all sizes and various government agencies and departments.

As defined by the Small Business Act, a small business concern is one that is independently owned and operated and not dominant in its field of operation. Under the law, other criteria bearing on size may include number of employees or dollar volume of business,

as established by the Administrator of the Small Business Administration. Thus, it is SBA's responsibility to determine specific and detailed size standards which, in turn, define those firms that are eligible to participate in SBA's varied procurement, financial and technical assistance programs.

In fiscal year 1983, well over $14 billion of Federal contracts were awarded under the small business set-aside program. This represents nearly one-half of all Federal awards to small business. Procurement size standards are the primary eligibility criterion by which business may access this $14 billion market. These standards have a critical effect on all SBA procurement programs, including the Prime Contracts Program, the Certificate of Competency Program, Labor Surplus Area Set-Aside Program, and the Section 8(a) Program. However, according to SBA, the proposed rule would have a marginal effect on SBA loan programs.

Certain industries were identified as presenting unique size standards considerations. They included the dredging industry, architectural and engineering services, and the manufacturing of military protective clothing. As a result of these hearings, it became increasingly apparent to this Committee that additional statistical data on Government procurement for the above three industries was needed prior to a final determination by SBA to revise the size standards for each of these industries. Accordingly, on December 9, 1983, this Committee requested data from the General Accounting Office in order to investigate the Government procurement history with these three industries.

SBA's proposed rule became final on February 9, 1984; however, these hearings prompted SBA to undertake similar, specialized reviews of its own for certain identified industries. Some of these reviews are still pending despite publication of the final rule.

The Subcontracting Program

Hearings on the Small Business Subcontracting Program were held on April 5, April 10, April 25, June 21, and June 28, 1984.

The Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems conducted a series of hearings to determine compliance with the subcontracting program for small and small disadvantaged businesses. This program was established by Section 211 of Public Law 95–507 and mandates that most Federal contracts over $500,000 ($1 million, if for construction) awarded to large business must contain a subcontracting plan containing six specific elements designed to increase subcontracting opportunities for small and small disadvantaged business concerns.

When Public Law 95–507 was signed into law on October 24, 1978, it was hailed as a landmark piece of legislation. Substantial increases were expected in the amount of subcontracts awarded to small and small disadvantaged businesses. While some success has been achieved much more remains to be done.

Background.—Prior to 1978, section 8(d) of the Small Business Act merely encouraged large business concerns to utilize small business as subcontractors in the performance of Federal contracts. Whereupon, legislative emphasis was on voluntary "best efforts" by large contractors to subcontract to small concerns. Despite the fact that the percentage of subcontracts awarded to small concerns

increased over the years, these procurements remained small in both absolute dollar value and share of total awards.

Section 211 of Public Law 95–507 (1978), changed the emphasis from voluntary "best efforts" to *mandatory* efforts to insure that small and small disadvantaged concerns "have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency." The Act mandates that Federal contracts over $10,000 shall contain a clause entitled, "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals." For larger contracts over $500,000 ($1,000,000 for construction), the law also requires a subcontracting plan setting forth percentage goals for utilizing small business concerns, including separately identified goals for small disadvantaged concerns. Pursuant to section 211, large subcontractors that receive awards in excess of the dollar thresholds also are required to adopt a plan similar to that required from prime contractors.

Such a contract cannot be awarded unless a plan is accepted within the time frames established by the agency. Under the law, the plan must contain at least the following six elements:

—Percentage goals for small and small disadvantaged business subcontracting;

—Name of the individual responsible for administering the subcontracting program and a description of the duties of such individual;

—Description of the efforts to ensure that small and small disadvantaged businesses will have an equal opportunity to compete for subcontracts;

—Assurances that the subcontracting clause be included in all subcontracts having further subcontracting opportunities and that all big business subcontractors having a subcontract in excess of $500,000 ($1 million for construction) that offers further subcontracting opportunities adopt a subcontracting plan similar to the primes;

—Submission of periodic reports and cooperation in any studies or surveys required by the contracting agency or the Small Business Administration (SBA) in order to determine the extent of compliance with the subcontracting plan; and

—Description of the type of records maintained to demonstrate compliance with requirements and goals in the subcontracting plan.

The requirement for subcontracting plans does not apply to small business prime contractors or subcontractors, prime contracts not offering subcontracting possibilities, contracts where the work is to be done totally outside of the United States, its territories/possessions and for services which are personal in nature.

Prior to award, it is the responsibility of the contracting officer to obtain and review plans for adequacy. After contract award, the contract administrator monitors compliance with the plan. The law states that failure of a contractor to comply in good faith with the plan is a material breach of the contract or subcontract.

Remedies for violation of a plan available under the statute and Office of Federal Procurement Policy Letter 80–2 include, but are not limited to, termination for default and a negotiated reduction

in the contract price. Moreover, the General Accounting Office has ruled that contracts awarded without a subcontracting plan where it is required are "legally defective" thereby invoking similar remedies.

On December 10, 1982, a report of the House Committee on Small Business entitled "Minority Business Development Efforts of the Small Business Administration" (Report No. 97-956) concluded that the "subcontracting program has had limited success during its four years of implementation." Moreover, despite the availability of adequate remedial measures, Federal buying activities have failed to utilize these remedies when substantive violations of subcontracting plans are discovered.

Problem areas.—The series of Subcommittee hearings revealed the following major problems with the implementation of the subcontracting program:

Lack of Subcontract Awards:

(1) Despite the clear mandate of Public Law 95-507, contracting officers were awarding contract without the six elements of the plan;

(2) Contracts were awarded without subcontracting goals to small and/or small disadvantaged businesses;

(3) Clearly and unequivocally, inadequate subcontracting goals have been accepted and continue to be accepted by contracting officers;

(4) Contracting officers and their superiors were and are awarding contracts without regard or respect for the law;

(5) Contracting officers and their superiors accept subcontracting goals that were calculated incorrectly;

(6) While prime contract dollars to large contractors have increased dramatically, their participation in the subcontracting program has been lagging.

Lack of Enforcement:

(1) Federal agencies were not submitting 294's and 295's as mandated by Federal Regulations.

(2) Goals reported 294's did not match goals in the subcontracting plan.

(3) Standard Form 294's were completed improperly.

(4) Performance reported on 294's did not resemble goals.

(5) Contracts that were modified, but did not contain modification of subcontracting goals.

(6) Large businesses complained of the lack of uniformity in program administration.

(7) Several prime contractors were setting low subcontracting goals in contracts with incentive clauses so that it appeared as if the prime had exceeded its subcontract goals to small and/or small disadvantaged businesses by as much as 200 percent. Result: Award fees were given to the prime contractor for surpassing artifically low subcontracting goals.

Lack of Consistent Interpretation:

(1) Even though P.L. 95-507 is nearly six years old, the Federal Government has not come up with a uniform check list

that can be used by all agencies to evaluate the acceptability of plans nor uniform procedures that are applicable to the breach of a subcontracting plan.

(2) Consistent and uniform interpretation of the statute and regulations for implementation by various agencies of the Federal Government. It appears that a uniform check list has not been implemented.

(3) Lack of appropriate remedial measures against Federal employees who violate the law.

(4) Lack of consistent reporting requirements for flow down requirements.

Lack of Administration by SBA:

(1) The Small Business Administration has not assigned an adequate number of personnel to administer the subcontracting program in the central office, as well as, their field offices.

(2) Lack of SBA to provide the small and small disadvantaged business community affirmative help in locating potential subcontracting opportunities and providing the technical assistance sometimes needed to become qualified as a subcontractor.

(3) SBA's failure to take more initiative to institute a uniform governmentwide procedure which would impose sanctions against offending prime contractors.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

On Wednesday, September 19, 1984, the SBA and SBIC Authority, Minority Enterprise and General Small Business Problems Subcommittee held a hearing in Washington, D.C., to investigate State implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982 to find out if Disadvantaged Business Enterprises (DBEs) are receiving the minimum 10 percent of the total dollar amounts appropriated under this act.

Witnesses included State representatives from the Department of Transportation, Maryland, South Carolina, New York, California, Illinois, and the District of Columbia.

This hearing focused on the implementation of Section 105(f) by selected States and the U.S. Department of Transportation (DOT); and the strategies they employ to ensure maximum use of small disadvantaged businesses that are qualified to perform construction industry tasks as well as professional, technical and other related services under Federally assisted transportation and highway improvement contracts.

Three problem areas have been identified that significantly affect the level of DBE participation and the amount of Federal funds they receive under this act.

The first problem is fourfold and continues to impede DBE progress in the program. This Subcommittee was interested in finding out what steps the States and DOT had taken to: (1) eliminate barriers such as bonding, prequalifications and licensing; (2) provide technical, financial and other supportive services to new and existing firms; (3) inform DBEs about specific contracting opportu-

nities; and (4) ensure the maximum participation and utilization of DBEs.

The second problem area addressed during the hearing was noncompliance which undermines the integrity and intent of this program. This Subcommittee reviewed the procedures used by each State to ensure that: (1) recipients comply with Section 105(f); (2) data on DBE participation and the amount of funds DBEs receive under this act is accurate and reflects actual contract awards only; (3) they have adequate procedures to detect and take strong actions against front companies; (4) they utilize debarment proceedings or make appropriate recommendations for criminal or civil actions against violators of the program; and (5) maximum contracting opportunities are provided for DBEs.

Each State's certification program was investigated to determine if their programs are designated to increase DBE participation by employing enough trained personnel to process certification applications expeditiously.

This hearing highlighted deficiencies in regulations that hamper strong enforcement of program guidelines and disclosed areas of weakness and ineffectiveness in both Federal and State programs.

As a result of this hearing, this Subcommittee will continue to closely monitor DOT and individual recipients to ensure that steps are being taken to: (1) increase DBE participation and the number of DBEs who will be qualified to participate under this act; (2) eliminate front companies and other barriers that negatively impact on DBE participation; (3) accurately collect and record data that reflects DBE participation and the total number of funds they have received to date; and improve the certification program to increase the level of DBE participation under this act.

SUBCOMMITTEE INVESTIGATIVE AND OVERSIGHT

8(a) Regulations

On December 22, 1983, SBA issued for publication in the Federal Register proposed changes to the 8(a) regulations. The public comment period was for 60 days.

The Subcommittee reviewed the proposed regulations and concluded that, if adopted, they would have a deleterious affect on both present and potential 8(a) firms. Accordingly, the Subcommittee requested SBA to extend the comment period to ensure greater participation from the minority business community. SBA did agree to this request and extended the comment period for an additional 30 days.

During the comment period, the Subcommittee received a large number of inquiries regarding the proposed regulations. All comments received reflected a general disagreement and dissatisfaction with the proposed regulations and their potentially adverse impact on socially and economically disadvantaged firms. The Subcommittee concurs with this view and further believes that the proposed changes would fail to promote and, indeed, impede the competitive viability of 8(a) firms.

Many of the proposed revisions would make substantive changes to the present 8(a) regulations. The following is a summary of some of the provisions of major concern to the Subcommittee:

(1) The proposal eliminates graduation as a method of program completion.

(2) The proposal requires that once a firm enters the 8(a) program and receives an assigned Standard Industrial Code (SIC), it may never thereafter have those designations changed.

(3) Individual membership of a socially economically disadvantaged group is not conclusive if it does not appear that the individual has "maintained identification to the extent that he or she is commonly recognized as a group member."

(4) New and exceedingly vague criteria is established to determine economic disadvantaged.

(5) The proposal would specify "Good Character" as eligibility requirement without defining that term at all.

(6) There are no criteria established for the computation of the fixed program participation term.

(7) The grounds set forth for program termination are vague and thereby subject to arbitrary abuse by SBA.

(8) A new section is created entitled "Suspension of Program Assistance" which would give SBA unilateral authority to suspend all contract support to an 8(a) firm without first affording an opportunity for an administrative hearing.

(9) SBA may deny advanced payments if financing is available at the "current market rate". Present regulations allow for the use of advanced payments when the terms of available financing" are not conducive to the effective and/or business development purposes of the 8(a) program."

(10) The proposed regulations state that Business Development Expense (BDE) would not be available for capital equipment when funds are available for SBA's financial loan programs, personal resources of the principals or from outside sources "at the current market rate". Present regulations provide that BDE may be used to purchased capital equipment if it, in essence, will promote the competitive viability of the firm.

The proposed 8(a) regulations have not yet been issued by SBA in final form. However, the Subcommittee has requested that SBA make a number so substantive changes prior to the issuance of final regulations. In this regard the Subcommittee prepared and submitted to SBA a detailed analysis of the agency's proposal and specific recommendations for appropriate modifications.

Innovation and related issues

The need for small business innovation legislation was first considered at joint hearings held in August 1978 by subcommittees of the House Small Business Committee and the Senate Small Business Committee. These hearings focused on the important role of small business in technological and scientific innovation and the underutilization of small business in Federally-funded Research and Development (R&D). The Committee found that over-emphasis on R&D universities, nonprofit organizations and Federal labs, the virtual exclusion of small business in Federally funded R&D, and other Government policies were having serious effects on small R&D firms and creating a climate for technological innovation that was economically unhealthy. Extensive hearings were held by your

Committee in the 96th and 97th Congress on small business innovation legislation. The Small Business Innovation Development Act of 1982 (P.L. 97-219), was the result of that effort.

In addition to monitoring the implementation of P.L. 97-219 the Committee also investigated other issues of importance to innovative small business concerns. A summary of its major reviews follows.

The SBIR program

P.L. 97-219, provided for the establishment of Small Business Innovation Research (SBIR) program in all Government agencies with R&D budgets in excess of $100 million.

The Act requires a percentage of the qualifying agency's extramural R&D budget to be expended through this SBIR Program. Statutory amounts for small business research are 0.2 percent in 1983, 0.6 percent in 1984, 1 percent in 1985, and 1.25 percent in 1986 and subsequent years. DoD has an additional year to reach the 1.25 percent goal.

The SBIR program shows great promise and most of the eleven qualifying agencies are implementing the program enthusiastically. Some agencies, however, have attempted to reduce the size of the program by redefining the term "R&D".

The Federal Government funds approximately one-half of all the Nation's R&D. Many agencies have had historical and philosophical ties with educational institutions, big businesses, and Government labs which perform more than 97% of Government R&D. It has, therefore, been necessary for the Committee to closely monitor the SBIR Program to overcome this bias in favor of performers other than small business and to assure implementation of P.L. 97-219 in accordance with the intent of Congress. The Committee has reviewed agency SBIR policy directives and expressed appropriate concerns to Administration officials responsible for directing this program.

During FY 1983, the first year of the program, SBA disseminated approximately 340,000 copies of the pre-solicitation announcement and provided SBIR program speakers at 43 seminars and conferences throughout the country. Three outreach seminars for minority and disadvantaged individuals were held in Texas, Illinois, and Washington, D.C. SBIR awards were made by 11 participating agencies, DoD, NASA, DoE, HHS, DoT, DoI, EPA, NRC, ED, and DoA. Award totaled approximately $44.5 million; thirteen percent of the total dollar value of awards, or $5.7 million, was award to minority-owned firms. Seventy-nine percent of the offerors who received awards had no prior contract actions with the awarding agency in the preceding three years which indicates that the SBIR program is encouraging new performers for Government R&D efforts.

Department of Commerce

Because the Office of Productivity Technology and Innovation (OPTI) of the United States Department of Commerce is emerging as the lead office for innovation policy within the Federal Government, it is vital that OPTI maintain a sensitivity to small business and the role small business plays in technological innovation.

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Small innovative firms have special needs that are not always recognized or addressed in the programs and policies of Government agencies and a special office within OPTI, therefore, would perform an important policy function and should be maintained.

The decline in industrial innovation in the United States, a matter of considerable concern to the Small Business Committee, prompted Committee efforts to request the establishment of a small business office within OPTI on the basis that it would serve the Department's mission and objectives. The interest and support of the Committee was a key factor in the agency's decison to focus upon small business innovation activities with the establishment of this special division.

The Small Business Technology Liaison Division is now functioning within OPTI and the Committee has requested that funds be made available for its continuance. The Office provides a valuable liaison function between OPTI, small and minority businesses.

Small firms are the Nation's leading innovators but are not always able to marshall the forces necessary to enable them to bring new technologies and processes to commercialization. The existence of a small business office in this important agency can enhance the innovative capacity of small entities, and increase the Nation's competitiveness in world markets.

DoD Directive 5230.25 Withholding Technical Data

Section 1217 of P.L. 98-94, the 1984 Department of Defense Authorization Act, amends Chapter 4 of Title 10, United States Code, by adding a new section 140(c) that authorizes the Secretary of Defense to withhold technical data from public disclosure in certain limited circumstances.

The Department of Defense proposed implementing regulations were published for public comment on December 22, 1983. A second draft (circulated under draft number 5400.XX) was circulated to those who contributed comments and has been the subject of conferences and negotiations, primarily with the Small Business Committees of both Houses and with small business interest groups.

The Department of Defense Directive 5230.25 applies to unclassified technical data with military or space application in the possession or control of a Department of Defense Component which is subject to export control under the Export Administration Act or the Arms Export Control Act.

The intent of section 1217 of P.L. 98-94 is to keep critical United States technologies from our enemies. Access to technical data is needed, however, to permit competitive bidding for defense contracts. It was the concern of the Committee, that Directive 5230.25 would unnecessarily inhibit competitive Department of Defense spare parts procurement and thus minimize the cost savings and competition enhancement capabilities of recent Committee legislation, H.R. 4209 the Small Business and Federal Procurement Competition and Enhancement Act of 1984 (P.L. 98-577).

The Committee requested clarifying language to ensure maximum practicable access to technical data by small businesses and by technical data brokers which assist small businesses to acquire such data in a timely fashion for the purpose of military procurements. Unless the data pertain to "critical" military components or

would jeopardize an important technological or operational military advantaged of the United States, dissemination to qualified contractors should be permitted. The final version of Draft 5230.25 contains many of the suggestions made on behalf of small firms and was signed by Secretary Wienberger on November 6, 1984.

It is the intent of the Committee that implementation of this Directive be closely monitored so that agencies' procurement officials do not interpret too broadly their authority to withhold technical data. The Committee believes that militarily critical data can be shielded without denying access to potential bidders and that the Directive must not be allowed to become a disincentive to small business participation in Department of Defense contracting nor an unnecessary barrier to competition.

Patent fees

Legislation passed in the 97th Congress providing additional funds for the Patent and Trademark Office (PTO) to upgrade patent services was well intended. The substantial patent fee increases contained in that legislation, however, and the imposition of maintenance fees for the first time in the history of the United States Patent System, raised considerable concern within the small business community because of the chilling effect such fees will have upon innovation.

On June 29, 1983, Chairman Parren J. Mitchell, introduced H.R. 3462, The Small business Independent Inventor Patent Fee Assistance Act, an amendment to the Patent and Trademark Laws which would exempt small businesses, independent inventors, and nonprofit organizations from payment of patent maintenance fees and from automatic patent fee increases. H.R. 3462 was referred to the Judiciary Committee and no action was taken on the measure during the 98th Congress.

These increases and the threat of future automatic increases impose barriers to invention and innovation by making patent protection unaffordable for a large segment of our population. Small business and independent inventors will be forced to abandon patent protection long before the commercial value of the patent can be reasonably assessed.

Market potential often takes several years to discern, and many patent owners have proprietary interests, not in one or two, but in many inventions. Patent holders will be forced to choose from among their patentable ideas those most likely to succeed even though it is unlikely that marketability is or can be known.

The patent fees are designed to permit full recovery by the PTO of their cost of operation, a faulty concept in itself. The ultimate value of invention and technological innovation is to the economy not just to the inventor, and the impositon of "user fees" upon inventors will discourage invention and economic growth.

The new law imposes maintenance fees of $400, $800, and $1,200 to be paid for each patent held three and one-half, seven and one-half, and eleven and one-half years, respectively into the life of the patent. Even with the 50% reduction available for small businesses, individuals, and nonprofits, the burden on these groups will be onerous. The first such payment will be due in 1985.

The oppressive increase in fees constitutes a barrier to use of the patent system and is a tax upon the creative genius of this Nation. The Committee believes that the subject deserves to be fully discussed and the concerns of inventors fully considered.

SUBCOMMITTEE ON GENERAL OVERSIGHT AND THE ECONOMY

The following is an outline of the oversight Subcommittee's activities in the 98th Congress.

A. Small Business Participation in Federal Procurement

On October 5, 6 and 12, 1983 the Subcommittee held hearings on Small Business Competition for Federal Procurements. The October 12 hearing was held in Greensboro, North Carolina at the request of Subcommittee Member Britt.

Statistics compiled by the Small Business Committee provide compelling justification for legislative intervention in Federal procurement.

The share of the Federal prime contract dollar awarded to small business is disproportionately low. According to data supplied to the Small Business Committee by the Federal Procurement Data Center, of the $475 billion of Federal contracts awarded over the last four and one-half years, small business received only $80.6 billion—or a mere 17 percent of the total. However, by Federal definition, over 98 percent of all business establishments are classified as small.

Statistics also indicate that this trend is worsening. The Department of Defense (accounting for approximately 80 percent of the Federal purchase dollar) reports that the percent of prime contracts awarded to small business has fallen from 20.8 percent in fiscal year 1979; to 20.4 percent in both fiscal year 1980 and fiscal year 1981; to 19.7 percent in fiscal year 1982; and to 17.4 percent through the first 11 months of fiscal year 1983.

Evidence further indicates that Federal procurements are highly concentrated in the hands of a few large business concerns. In fiscal year 1982, the top 25 DoD prime contractors accounted for nearly 46 percent of the entire purchase dollar; the top 5 prime contractors accounted for 19.6 percent of the budget, or nearly the same amount that was awarded to all small business concerns (19.7 percent).

After careful and extensive review of the materials, data and investigative reports made available to the Subcommittee, two pieces of legislation were marked-up on October 27, 1983. Both bills, H.R. 2133, introduced by full Committee Chairman Mitchell and Representative Addabbo, and H.R. 4209, introduced by Subcommittee Chairman Bedell and Representative Boxer, were reported as amended by a unanimous vote (11–0) of those Members present.

Both bills, as amended by the Oversight Subcommittee, were favorably reported by the full Committee on November 3, 1983 by a vote of 37–1.

On October 2, 1984, H.R. 4209, as amended by full Committee Chairman Mitchell, was passed by the House by a vote of 416–0. Chairman Mitchell's amendment greatly expanded the scope of the Committee passed version of H.R. 4209 and came about through

the combined efforts of the Small Business, Armed Services, and Government Operations Committees.

The Senate passed an identical version of the bill on October 4, 1984. The President signed the legislation on October 30, 1984 (P.L. 98–577).

H.R. 2133 was not considered by the House. Instead, Subcommittee Chairman Bedell offered an amendment to H.R. 5167, the FY85 Department of Defense Authorization bill, that embodied much of the legislative language and philosophy of H.R. 2133. The amendment was accepted by the House on May 30, 1984 by a vote of 324–75. A House-Senate Conference Committee agreed to Chairman Bedell's amendment in their Conference Report. The bill was enacted on October 19, 1984 as P.L. 98–525.

B. Windfall Profits Tax Collections and Independent Gasoline Marketers

The Oversight Subcommittee followed up on complaints that the major producers of Alaska North Slope oil were using questionable accounting practices in order to reduce their Federal tax liabilities by hundreds of millions of dollars per year. This tax savings, it was said, was being passed through in the form of lower retail prices that competitors were unable to meet, thus creating a taxpayer subsidy for an unfair competitive situation.

A hearing was held on September 15, 1983 to explore the situation. Two hearings had been held during the 97th Congress (December 1 and 2, 1982). Independent gasoline marketers and major refiners testified. After the September 15 hearing, Treasury Department officials met privately with the Subcommittee to lay out their plans.

Shortly after the Subcommittee's hearings, the Treasury Department issued Revenue Ruling 83–161, effectively closing the tax loopholes that were causing the competitive imbalance in the marketplace. This ruling is estimated to increase Federal revenues by some $200 million per year.

As a result of the September 15 hearing, Chairman Bedell introduced two bills cosponsored by Representative Shannon, a member of the Ways and Means Committee. The first, H.R. 4819 sought to direct the Federal Energy Regulatory Commission (FERC) to regulate, in a proper manner, tariffs on the Trans Alaska Oil Pipeline. FERC stated that passage of H.R. 4819 would result in the collection of almost $8 billion of additional revenue to the Treasury in Windfall Profits Taxes by 1993 (including $904 million in FY84). Although this bill did not progress through the House, the D.C. Court of Appeals ruled that FERC should regulate TAPS tarrifs in accordance with the same principles laid out in H.R. 4819.

The second bill, H.R. 4561, sought to repeal Treasury Revenue Ruling 75–483 which allows oil companies that also are shippers of Alaska North Slope oil to deduct as foreign source income the revenue earned during the time they are in international waters. (By law, ANS oil may not be exported.) H.R. 4561 was included in the Deficit Reduction Act, P.L. 98–369, and is estimated to save the U.S. Treasury tens of millions of dollars annually.

C. Pollution Control Financing

It has been clearly demonstrated that there is a continuing need of small businesses for assistance in meeting extraordinary capital requirements related to compliance with environmental protection laws and regulations. The Small Business Administration's pollution control financing program was praised as a successful approach toward solving this problem. The SBA program couples Federal Government loan guarantees with small-issue industrial development bonds issued by local governments.

By administrative actions in 1981, small issue IDB's for small business pollution control expenditures were wiped out. Through persistent actions in concert with the bipartisan support of the full Small Business Committee, oversight Subcommittee activities resulted in legislative language in the FY 85 Continuing Appropriations bill, P.L. 98-473, and the Deficit Reduction Act, P.L. 98-369 that saved the SBA pollution control loan program.

On November 11, 1984, the SBA issued a notice to its field offices directing them once again to accept applications for guarantees of pollution control facility financing obtained with proceeds from tax-exempt industrial revenue bonds.

D. Gasoline Marketing

Continuing the Small Business Committee's history of concern for fair competition in petroleum marketing, on April 11, 1984 the oversight Subcommittee joined the Energy Subcommittee for a hearing on the effects of huge oil company mergers on independent jobbers, dealers and truck stop operators.

As a result of the Committee's concerns, Representative Conte, the Subcommittee's ranking member and Subcommittee Chairman Bedell introduced H.R. 5750 to amend the Petroleum Marketing Practices Act to extend the rights of independent marketers affected by mergers between their suppliers. Chairman Bedell also introduced H.R. 1755, the Small Business Motor Fuel Marketer Preservation Act.

E. Renewable Energy Development

On June 28, 1983 the oversight Subcommittee joined the Energy and Commerce Subcommittee on Energy Conservation and Power and the Education and Labor Subcommittee on Employment Opportunities for a hearing on H.R. 1595, the Solar Energy National Security Employment Act. H.R. 1595 is omnibus legislation covering a wide variety of legislative initiatives to assist the development of viable renewable energy industries in the United States. The hearing was orchestrated as part of a week of coordinated activities designed to draw public attention to the benefits of renewable energy.

F. Building Trade With Africa

On May 19 and June 22 the oversight Subcommittee joined the Foreign Affairs' Subcommittee on International Economic Policy and Trade and Subcommittee on Africa for hearings on Building Trade with Africa.

The main focus of the oversight Subcommittee's interest in this area was to facilitate the transfer of appropriate technologies from small U.S. firms to Third World Nations. The Subcommittee strongly feels that Technology Trade Fairs provide a suitable mechanism to introduce domestic small business to developing economies. The point was repeatedly made at these hearings that the Agency for International Development should sponsor, participate in and organize more technology trade fairs than they have in the past.

G. SBA's Procurement Automated Source System

On January 25, 1984, the oversight Subcommittee held a hearing to explore the operational problems SBA was having with the Procurement Automated Source System (PASS). PASS is a computer-based program designed to match the capabilities of the thousands of small businesses in the system to the procurement needs of the Federal Government and its large prime contractors.

Because of poor contractor selection and a lack of any effective administrative oversight, SBA's PASS program had deteriorated beyond the point where it served any useful purpose. The Subcommittee's concern about PASS was shared by the full House when it accepted an amendment to the FY 85 SBA authorization bill offered by Subcommittee Chairman Bedell to impose strict management controls on the system. Although the SBA authorization did not progress through a House-Senate conference committee, the Subcommittee plans to follow the PASS program very closely in the next Congress.

H. SBA's Computer Operations

Based on reports that the SBA had sent $180,000 in checks, many of them unrecoverable, to the wrong people, the Oversight Subcommittee held a hearing on June 27, 1984 to overview the management of SBA's computer systems.

The Subcommittee was disturbed to learn from sources, including the General Accounting Office, that SBA lacked competent management and technical resources to manage properly its large and diverse computer-based information systems. The Subcommittee strongly urged the SBA's top administrators to put a priority on getting these systems in order and plans to continue its oversight in this area.

I. Product Testing Standards

On September 20, 1984, the oversight Subcommittee held a hearing to investigate the role that large standard setting and product testing institutions play in assisting or hindering the entry of new products into the marketplace.

Many products, such as batteries, fire extinguishers, electrical and plumbing devices, must be approved by a recognized testing laboratory before insurers will offer coverage to users. In many cases, individual states may require such approval before a product can be offered for sale within the State.

Many product standards are set by existing industry participants. Two large non-profit testing laboratories, Factory Mutual Engineering and Underwriters Laboratory, dominate the product

testing approval process. The Subcommittee was concerned that the introduction of new, innovative products could be hampered by the present semi-closed, standard setting and testing system. This concern was borne out by the testimony of three small businesses and Federal Trade Commission specialists who follow this issue.

Noting the complex and controversial nature of the issue, the Subcommittee plans to study this area extensively in the future.

J. Small Business and Crime

On January 14, 1984, the Oversight Subcommittee held a field hearing in Clearwater, Florida (at the request of Subcommittee Member Bilirakis) for a hearing to explore the issue of small business and crime.

The Subcommittee heard from small businesses and law enforcement specialists about the changing nature of the crime threat. For example, more and more businesses are threatened by computer crimes, including software theft and the enforcement priorities of local, State and Federal authorities.

K. Small Business and Restructuring of Rail Transportation

On October 13, 1983, the oversight Subcommittee held a field hearing in Cooperstown, N.Y. (at the request of Subcommittee Member Boehlert) on the issue of small business and the restructuring of rail transportation.

The Subcommittee investigated the problem that rail abandonment, resulting from Class I railroads trying to become profitable or due to "mega mergers", has had on small business and their communities. A possible development of these abandonments is the emergence of "regional railroads". The hearings focussed on the question of whether regional railroads can continue to provide service to smaller businesses and preserve competition between the major carriers.

L. Prompt Payment

At the request of Subcommittee Member Sisisky, the oversight Subcommittee held a hearing in Portsmouth, Virginia on January 17, 1984, on the issue of prompt payment for services and goods rendered to the Federal Government.

From several small businesses who testified at the hearing, and many more small firms who attended the hearing and spoke out after the formal hearing ended, the Subcommittee learned that the spirit and intent of the Prompt Payment Act was being violated by certain agency policies and OMB directives. One small firm told the Subcommittee that its problem went far beyond the late payment for goods and services that appeared to be fairly common, it actually was forced to write off several debts owed by the Federal Government as uncollectable.

The Subcommittee found these circumstances to be completely unacceptable and pledged to take whatever action was necessary, whether on a case-by-case basis or with new legislation, to correct the situation.

M. Bank Deregulation

On July 9, 1984, the Oversight Subcommitte held a field hearing in Denver, Colorado (at the request of Subcommittee Member Schaefer) to explore the impact of bank deregulation on small businesses.

The Subcommittee heard from small real estate and insurance companies, national small business associations, and various financial institutions about their opinions of the changes that are taking place in the banking industry and the implications of proposed industry deregulation initiatives for their businesses.

Because of the rapid changes that are occurring in the financial industry, the Subcommittee believes it to be very important that the special concerns of the small business community are reveiwed and plans to monitor the deregulation of banking institutions carefully.

N. Small Business and the Changing Nature of the International Economy

In the 98th Congress, the General Oversight and the Economy Subcommittee undertook an extensive investigation of the effects on American businesses and employment caused by rapid technological change and international competition. Two hearings were held with leading national experts on automation on May 17 and 18, 1983. Also, on June 6, 1984, the oversight Subcommittee joined the Joint Economic Committee and the Congressional Clearinghouse on the Future for a conference on "The New Economy," to explore international trade and financial issues.

The Subcommittee was represented at numerous national and international conferences including, the White House Conference on Productivity, the President's Commission on Industrial Competitiveness, the Business Week/National Foreign Trade Council conference on Industrial Policy, and the Canada-U.S. Legislative Visits Programs. In addition, the Subcommittee supported several studies of the implications, for small businesses of employment, technological, and international changes. These studies, by the Office of Technology Assessment and the General Accounting Office, are designed to provide ideas and direction for future policy in these areas.

The Subcommittee developed legislation to address the issue which many consider to be the single most important competitive problem now facing American business and workers: the overvalued dollar in international exchange markets. H.J. Resolution 585, introduced by Subcommittee Chairman Bedell on June 6, 1984, drew the support of groups as diverse as the AFL–CIO and the National Association of Manufacturers. It is widely believed that the high value of the dollar was a major contributor to record levels of small business bankruptcies and is an inhibiting factor in job creation in the American economy. According to the Federal Reserve Board, the dollar appreciated by about 70 percent from July 1980 to October 1984. This appreciation effectively imposes a tax on U.S. small business while providing a subsidy for imports.

SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS

A. Impact of Deregulation on the Air Transportation Marketing System

On May 24, 1983 the Subcommittee held a hearing to review the decision of the Civil Aeronautics Board of December, 1982 which could alter substantially the travel agency system over the next few years. The Members of the Subcommittee wanted to explore the reasons for this decision which will alter the system of ticket sales that has been in effect for almost 40 years.

Under the current system, approximately 21,000 travel agencies are accredited to sell airline tickets to the public. Most of these agencies are small businesses, and the Subcommittee was concerned about their economic survival.

Dan McKinnon, Chairman of the CAB testified that the decision of the Board would open competition so that air carriers could sell tickets through a variety of mechanisms, and not be simply restricted to either their own sales offices or accredited travel agents. Congressman Bilirakis, a Member of the Full Committee, expressed his concern over the CAB decision and how it could affect tourism which is so vital in his district and the State of Florida.

Also testifying was Congressional Travel and Tourism Chairman Congressman Bill Boner, who related the reasons for the creation of the travel agency system and the threat posed by the the CAB decision. He indicated that there was no reason to change a system that all could see was working well.

Representatives of the Air Transport Association of America and the International Air Transport Association argued that the loss of antitrust immunity would make the risks too great for the airlines to continue the travel agency program as we know it. They therefore sought Congressional restoration of such immunity, which will end in 1985.

Witnesses representing the American Automobile Association, the American Society of Travel Agents, and the Association of Retail Travel Agents favored retention of the current system. They indicated that the travel agency business has provided unique opportunities for women and minorities to enter business, and has served the public well. Further, they argue, there is no compelling reason to change a system that is working so well.

A different perspective was presented by Arlene D. Macchia, president of the National Passenger Traffic Association which represents in-house business travel departments. Ms. Macchia's association supports the trust of the decision, believing that it would be better for the public and its members to create a more open system.

Those witnesses opposing the Board's decision were generally in support of H.R. 2053, the "Air Traveler's Security Act". This bill would substitute the findings of Administrative Law Judge Ronnie Yoder for those of the Board in its decision. The Yoder decision, which was overturned by the action of the Board, would have continued the antitrust immunity for acceditation of travel agents. It would preserve the basic agency system, but would also permit in-

novative marketing methods of airline tickets by groups in addition to full service travel agencies.

On July 26, 1983 Chairman Luken testified before the Public Works Subcommittee on Aviation with regard to the testimony that was taken by this Subcommittee concerning air deregulation. He indicated the deep concern expressed by the witnesses and our Subcommittee Members regarding the loss of antitrust immunity for the agency program. The Aviation Subcommittee was considering H.R. 2053, and held two additional days of hearings. No markup session was held.

This Subcommittee will continue to monitor the impact of the CAB decision as it becomes fully effective in 1985.

B. The State of Small Business in Rural America

On June 13, 1983 the Subcommittee held a hearing in New Ulm, Minnesota, in order to learn about the special needs and problems of small businesses in rural communities. Three panels of local witnesses testified, including representatives of small businesses in town, on the farm, and in agribusiness in general.

The witnessess indicated that there is a direct relationship between the farm economy and the earnings of small businesses in rural areas. During periods of high interest rates, these small entrepreneurs are unable to maintain a large inventory of goods, making it very difficult to please customers.

Other witnesses pointed to the problems raised by Government regulations which put artificial restraints on businesses. They also urged that tax policy be revised to encourage initiatives for farms and small businesses to develop new products and markets. The most frequently mentioned problem was high interest rates, and witnesses called upon Congress to lower spending and reduce the size of the Federal deficit.

C. Computer Crime Prevention

On July 14, 1983 the Subcommittee held a hearing on H.R. 3075, the Small Business Computer Crime Prevention Act. This bill was introduced by Congressman Ron Wyden, a Member of the Committee.

The use of computers by business has expanded rapidly over the last decade. As the cost and size of computer systems has diminished, their use by small business has grown. But along with an increase in use of information systems has come the increased abuse of this new technology for illegal purposes. Small businesses are particularly vulnerable to computer crimes because of a lack of resources, skills and information necessary to adequately protect these systems from computer criminals.

Testifying in support of this bill were a representative of the computer software industry, a law enforcement officials, authorities on computer crime, and a small businessman whose firm had been victimized by computer crime.

As the use of computers has grown, so has the incidence of such crime. Estimates of the losses in the private sector are as high as $1 billion annually, although accurately estimating losses is nearly impossible for several reasons. Victims are often reluctant to report crimes for fear of bad publicity. Also, computer crime statis-

tics are reported not as "computer crimes" but as ordinary white collar crime such as fraud, theft, or embezzlement.

Often, computer crimes are new ways of committing old crimes. Some of the more common types of computer crime are: theft of merchandize or property through the use of a computer, unauthorized use of someone else's computer, the theft, copyright infringement, or unauthorized destruction or alteration of computer-stored information or programs, and financial crimes such as directing payments to phony suppliers or employees.

One witness testified about an incident in which his family money order business lost more than $100,000 because an employee was able to use his knowledge of computers to create and cash phony money orders.

Small businesses are often more vulnerable to computer crimes than large businesses. Large businesses can have elaborate security procedures, and extensive internal an external auditing. Thus, computer crimes can often be detected relatively quickly. Quick detection, together with contingency planning and good insurance can keep the cost of such crimes for large businesses relatively low.

Small businesses suffer from a number of disadvantages. They often lack the resources, or do not recognize the need for implementing computer security safeguards. They often cannot afford to hire expertise to investigate computer crimes. Management may also lack the experise to properly oversee a company's computer operations, thereby giving the programmer or operator a virtually free hand. Some salesman may not inform customers of the vulnerabilities of their computer-related products in an effort to show those products in the best light.

After a computer crime is committed, the small businessman may not be able to rely on the criminal justice system for help. Law enforcement agencies at all levels are unprepared to meet the challenge of the computer crime problem. The judicial system is equally unprepared for this challenge. Law enforcement officials encourage the preventive, educational approach which costs far less than the long investigation, complex prosecution, and incarceration involved in a successfully prosecuted case.

However, most computer crimes never reach the prosecution state. Crimes using computers are among the most difficult to detect, and many of these crimes go undiscovered.

Two forces are emerging to encourage small business owners to pay closer attention to computer security concerns. The first is the insurance industry which is starting to vary premiums based on the amount of the insured's computer security, and the second is the growing computer security products industry. Current Government research on computer security is directed primarily toward Federal agencies, and not toward business. That is why the approach taken by the legislation, which is designed to get the information to business, was supported by witnesses at this hearing.

The Subcommittee reported H.R. 3075 by unanimous voice vote on September 15, 1983. The bill was ultimately signed into law in July 1984. As finally enacted the measure would require the SBA Administrator to establish a Small Business Computer Security and Education Advisory Council which would advise him on

—the nature and scope of computer crimes committed against small business concerns;
—the effectiveness of Federal and State law in deterring computer-related criminal activity or prosecuting computer-related crimes;
—the effectiveness of computer technology and management techniques available to small business for increasing their computer security; and
—the development of information and guidelines to be made available to the Administrator to assist small business concerns in evaluating the security of computer systems.

SBA also is required under the law to provide information to small businesses regarding crimes against small business by computer and security systems available to them. The agency will also be mandated to provide for periodic forums for small businesses to improve their knowledge of these matters.

The Subcommittee will monitor the implementation of P.L. 98–362 to assure that its mandate is carried out.

C. "Impact of Federal Regulations on Small Business"

On August 8, 1983 the Subcommittee held a hearing in Marysville, California to explore the regulatory problems confronting small businesses in this small California community. Various witnesses expressed their displeasure with regulations that were considered unnecessary or burdensome. Sawmill owners complained about the size of timber sales from Federal lands. Some small businesses simply could not compete with large firms for these sales because of the number of board feet offered was excessive for firms of small size. Other witnesses expressed concern about the possibility that the set-aside program for timber sales might be altered, eliminating some moderate-sized firms (which qualify for set asides under SBA size standards).

A local realtor described the difficulties facing real estate during times of high interest rates and urged action to bring them down, and an automobile dealer urged action against the practice of manufacturers providing fleet subsidies.

D. Vertical Price Fixing

The Subcommittee held a hearing on September 14, 1983 regarding a type of price fixing known as "resale price maintenance" which usually involves an agreement between a retail establishment and a manufacturer to sell a product at a particular price. The Subcommittee examined the issue of vertical price fixing because of the continuing controversy over whether the issue should be decided by the courts on the basis of such agreements being a "per se" violation of law, or whether the more difficult standard to prove, "rule of reason" should be applied.

Since 1911, the courts have found any such agreement to be a "per se" violation of the Sherman Act. (Dr. Miles Medical Company v. John D. Park and Sons). All a plaintiff need demonstrate is that the price fixing did, indeed occur. The controversy arose because of current attempts by many to argue that in some instances, resale price maintenance can be a good thing for the economy, the consumer, the retailer, and the manufacturer because it may foster

competition between brands. Further, it is argued by some, it may be that a product will get better service from the retailer if it is sold at a higher price, providing the establishment enough revenue to pay for more service personnel.

The Department of Justice filed a brief in a case before the Supreme Court arguing that the "per se" rule should be abandoned and the "rule of reason" should be substituted instead.

Mr. Tim Muris, Director of the Bureau of Competition of the Federal Trade Commission testified that there were some instances where resale price maintenance could be helpful to small manufacturers and distributors. He suggested that some small manufacturers might be unable to find distributors if a guaranteed markup cannot be given. He also argued that in certain cases small distributors would benefit from such price agreements because such agreements do allow for better service which such establishments are often able and willing to supply.

The Subcommittee heard from discount retailers who complain that some manufacturers refused to deal with them simply because they failed to sell their products at particular prices. In some instances, it was alleged that pressure was applied from the manufacturers as a result of other retailers' complaints about the competition.

They also argued that the real losers from resale price maintenance agreements are consumers and small businesses. The consumer is said to have lost because if all stores charge the same price for an item he or she loses the freedom of choice to decide whether it is worth shopping at higher priced stores because of their ambience. It limits comparison shopping. The small business under such agreements loses its right to compete by price.

During this hearing a consumer representative made the case for maintaining the courts' current stand on resale price maintenance. She argued that strict enforcement of prohibitions on price-fixing agreements would leave consumers with the widest assortment of shops at which to make purchases. Further, if the law is not enforced the level of consumer prices would be likely to rise.

The Supreme Court ultimately decided not to alter the standard by which such cases are decided. Congress also attached to an appropriations bill a prohibition on the Department of Justice's filing of additional petitions seeking to overturn the "per se" rule.

E. Impact of International Trade Practices on Small Business

The Subcommittee held a hearing March 23, 1984 on unfair trade practices, with a specific examination of how such activities affect the machine tool industry.

According to Otto Eckstein, of Data Resources, Inc., imports have cost 2 million Americans their jobs in the past year. The Subcommittee seeks to ascertain the cause of this industrial decline which threatens to make the United States a debtor Nation in contrast to the historic American position as the world's creditor.

The machine tool industry is one of the Nation's most basic industries and is in decline. Much of the downturn can be attributed to the influx of imports which have grown from a 4.5 percent share of the U.S. market some 20 years ago to about 37 percent in 1984. There are several explanations for this development, including the

serious overvaluation of the dollar. But it is also clear that unfair trade practices have been a major cause of the import growth.

Testimony was heard demonstrating that the Government of Japan targeted the American machine tool industry, which encouraged the creation of a large cartel and provided huge subsidies through a variety of mechanisms to promote exports. Significantly, the Japanese concentrated on developing the most sophisticated, computer-driven machines. This results in the loss to American companies of one of the most profitable portions of the business.

This particular industry is absolutely vital to the security of the United States, since virtually no tank, ship, or armament can be made without the use of machine tools. It is not certain, at all, if tools could be obtained in a timely manner from overseas sources during a protracted conflict. One of the reasons the United States was able to produce the industrial miracle it did during World War II was because it had the benefit of a vibrant domestic machine tool industry.

Witnesses at the hearing related how specific companies had suffered as a result of the downturn in the industry's fortune. In Rhode Island, for example, employment dropped 70 percent in 3 years. Also cited were the closures of plants by several of the machine tool manufacturers who had been able to withstand periods of economic slowdowns in the past. The difference this time, however, is the unprecedented import of such tools.

The decline in the industry is not due to a lack of effort by American industry to compete in the production of sophisticated equipment. Witnesses described the serious efforts undertaken in the United States to modernize plant. Our industry is also taking initiatives to improve foreign and domestic marketing and customer responsiveness.

One witness explained how hundreds of millions of dollars of research funds were obtained to assist the Japanese machine tool industry. This was done through the revenues raised by lucrative wagering on bicycle races. An agency of the Japanese Government then decided where some of those funds were to be distributed. A videotape of the facilities built with these funds was shown to the Members of the Subcommittee.

The Subcommittee further learned of how the Japanese were able to capture a large share of our market. In the initial stages of "targeting", the Japanese domestic industry is protected by closing the domestic market to imports. Then, in this case, machine tool operators were the recipients of a variety of subsidies, including grants, low-interest loans, numerous tax writeoffs, and the research resulting from the bicyle-race money.

The industry has filed a petition for relief from these unfair imports on national security grounds. This petition would limit imports to 17.5 percent of domestic consumption. The Chairman of the Subcommittee and many Members of Congress have written the President to ask for his favorable decision on the matter. As the 98th Congress ended, the decision was still pending in the White House.

F. Competition Between Small Business and Public Utilities

The Subcommittee held a hearing on May 22, 1984 to examine the competition between small businesses and utilities in the installation, supply, and service of heating and cooling systems and other energy products and services.

Since the oil shocks of the 1970's, consumers have become more conscious of conserving energy. Everyone wants to lower his or her energy bills with conservation methods. Utilities have begun to meet this need by diversifying into many services which have traditionally been performed by small contractors.

Some of this diversification is a result of the Residential Conservation Service (RCS) which was adopted as a major part of 1978's energy legislation. That legislation required the utilities to offer energy audits for a minimal fee to homeowners who wanted to determine how they could better conserve energy.

The policy question before the Subcommittee was whether the activity of utilities in energy conservation is healthy for the marketplace or if there are inherent advantages for utilities—due to their monopoly status—that make it difficult for small businesses to compete.

The Chief Counsel for Advocacy of the Small Business Administration testified regarding his office's report on this issue. He concluded that there were, indeed, problems of cross-subsidies. He argued that there is no way to regulate effectively the kind of subsidies between the utility business and their supply and installation components. He also made the case that the unregulated activities carried out by utilities do not provide sufficient public benefits to justify such monopolies entering these businesses.

Witnesses representing small businesses who are competing with these utilities claimed that there were advantages to utilities that came from their "protected status" as regulated monopolies. These advantages could never be gained by a small business. Such advantages may include the very good name that a utility has developed over years of service and advertising. They expressed concern about the use of "bill-stuffers" whose cost is largely borne by the ratepayer, and administrative costs of all kinds which may be used by the utility to lower costs to the "competitive" subsidiary.

One contractor complained about the large volume of advertising done in the name of the utility in direct competition with his company and its use of the utility fleet by the "competitive" side of the business.

Another small businessman described how the utility in his area was selling hot water heaters, gas grills, dishwashers, ranges, washers and dryers. The cost of these items is then added in payments on the monthly gas bill.

Representatives of utilities testified that many of these utility programs were beneficial for both the consumer and businesses. This is because they can introduce new products, and through large advertising campaigns increase total demand for their products. They also argued that in many instances public utilities have used a cooperative approach with small businesses in their regions and improved sales for all.

With regard to problems which may stem from competitive concerns, these spokesmen said there was sufficient authority in State regulatory commissions and the Federal antitrust law to protect small business and consumers.

A spokesman for State regulatory commissions pointed out that commissions could act on a complaint alleging that ratepayers were subsidizing an unregulated activity, but could not as a rule get involved in cases where there was no clear ratepayer impact.

The House of Representatives did pass legislation regarding the Residential Conservation Service which included some protections for small business against some of these utility practices. The Subcommittee Chairman was able to add an amendment to the "Conservation Service Reform Act" which would allow governors to review utility programs on request to determine if the utility had any "unfair competitive advantages". Agreement was never reached with a similar Senate bill.

SUBCOMMITTEE ON ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS HEARINGS HELD DURING THE 98TH CONGRESS

I. Environment

A. Small Business and the Hazardous and Solid Waste Amendment of 1984, H.R. 2867

The Hazardous and Solid Waste Amendments of 1984 was passed during the 98th Congress and amended the Solid Waste Disposal Act. The proposed bill required the promulgation of special regulations by the Environmental Protection Agency (EPA) for small quantity generators of hazardous waste and thus affected thousands of small businesses such as drycleaners, paint stores and service stations which might handle such materials. The bill further required the EPA to write the regulations within 18 months or the full weight of environmental regulations for large quantity generators would apply to small quantity generators. The proposed bill also place manifest or reporting requirements on small quantity generators which would place additional paperwork burdens on small businesses.

The Subcommittee held a hearing July 26, 1983, to consider the impact of such regulations on small businesses. EPA representatives testified that they could not meet the 18 month deadline. Small business owners expressed concern about proper disposal of the hazardous waste they generate, but felt it was unfair for them to pay an additional price if the EPA was unable to promulgate regulations on time. Many felt that if they were forced to comply with the same technical reporting and disposing requirements that the major hazardous waste generators must comply with, they might be forced to close their doors of business.

Because of concern about hardships the proposed bill placed on small businesses, several amendments were introduced and passed. One amendment eliminated the threat to small quantity generators from falling under full environmental regulations. Reporting requirements were also eased. The EPA was directed to engage in education activities to inform small quantity generators of their re-

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sponsibilities. An amendment authorizing funds was passed allowing the EPA to develop and implement such an educational program. Finally, a provision was included requiring EPA to study the reporting or manifesting system. The purpose is to study cost-effectiveness and simplification of the process to ease the paperwork burden for small quantity generators.

B. Small Business and Innovative Technology for Hazardous Waste Treatment

During the 98th Congress a hearing was held regarding the development of alternative technologies for treatment of hazardous waste. At this hearing on October 27, 1983, witnesses testified that there are many roadblocks hindering the development of alternative treatment technology, especially for innovative small businessmen, who lack the resources to carry on a protracted proceeding with the EPA.

Small business inventors described various roadblocks they have encountered which delayed or prevented the development of alternative technologies. The major problem revealed during the hearing was that these inventors cannot legally test their method of treatment without a permit issued by the EPA. The EPA, however, did not have the authority to allow the tests necessary to obtain a permit. In effect, new treatment technologies, and possible solutions to our Nation's hazardous waste disposal problem were being suppressed.

As a result a Research, Development and Demonstration Permit Amendment was included in the Hazardous and Solid Waste Amendments of 1984. This amendment provides needed authority for the EPA to expedite the permitting of promising new technologies for demonstration purposes.

Additional recommendations proposed by witnesses which need to be addressed in the 99th Congress are as follows:

PERMIT PROCEDURE

1. Set up a task force such as Governor Brown of California established:
   Governor's Office of Permit Assistance
   a. Provide guidelines and information to those applying for operating permits.
   b. Bring all the regulatory agencies together to inform the permit applicant what is required of him from each agency.
   c. This prevents:
      i. "Run around" from office to office for applicant.
      ii. Provides a uniform attempt to interpret the regulations.

2. Permit application forms need to be tailored to the method of treatment. (For example, a witness with a new technology testified that he had been given landfill application forms yet his method of treatment was not even similar to land-filling.)

3. Reduce Excessive Delays - there are excessive delays in the review and permit procedures. There is a backlog of approximately 9,000 permit applications. EPA representatives attribute these delays in part to a lack of skilled hydrogeologists and chemical engineers. (In 1981 one permit was issued. In 1982 four permits were issued. In 1983, though budgeted for 750 only 109 permits were issued.)

4. Common goals to be established - Witnesses testified that they have experienced a lack of coordination from within EPA programs. EPA programs need to have common goals.

5. Provide a more specific definition of treatment. One witness suggested that the definition must not be allowed to be a "semantical dodge" similar to that which currently exists for recycling. The definition should be amended to place primary emphasis on the extent to which a given method can demonstrate a permanent reduction or elimination of hazards associated with the waste through a biological, chemical or physical transformation or containment.

RESEARCH AND DEVELOPMENT

1. Establish Research and Development priorities and seek to implement them effectively.

2. Establish a central office contact at EPA for new ideas and related questions and problems. Provide information about this office to the public and all EPA employees so they can promptly direct inquiries to this office.

RESEARCH AND DEVELOPMENT cont'd

3. Information needs to be readily available and easily understood on assistance that exists which could help small companies introduce technological innovations into this market area.

4. EPA should review and test promising new methods of treatment in a timely manner.

FINANCIAL ASSISTANCE

1. Restore the recycling investment tax credit for the purchase of new and used equipment related to the recycling, transportation and beneficial reuse of hazardous wastes.

2. Re-establish the Pollution Control Bond Authorities on a tax-exempt basis as before. Since the loss of the tax-exempt status by rule in 1982, Pollution Control Bond use has dropped precipitously.

3. At the present time, the Small Business Innovative Research Act (SBIR) forces the EPA to set aside a portion (1984 - .6%) of their R & D money for small businesses. More should be targetted for innovation in the waste treatment and/or reduction areas of technology.

4. Set-aside money in the R & D budget to test promising new technologies. Currently, if a small business cannot afford the cost of tests required by the EPA the new technology must lay idle. Suggestion: Set-aside a percentage of the SBIR funds for testing promising new technologies developed by small businesses.

C. Hazardous Waste Landfills and their Effect on Small Business. The BKK Landfill in West Covina, California

1. The Subcommittee held a hearing in West Covina, California, on June 3, 1983 to study the impact of hazardous waste landfill sites on the surrounding business community. The testimony revealed that some small businesses in the vicinity need an inexpensive method of waste disposal (such as landfilling) to maintain a competitive business, but other businesses were adversely affected by the landfill's activities.

Tank spills on main thoroughfares during the day blocked potential customers and interrupted business. Local businesses feared that these spills and the proximity of the landfill itself could scare off customers permanently. The hearing focused attention on the economic affects of small businesses near a hazardous waste landfill and the health affects on their customers.

2. A follow-up hearing was held in July 1984 when 21 families in West Covina had to be evacuated from their homes. The California Gas Company, in doing a routine check for gas leaks, had discovered dangerously high levels of methane and vinyl chloride gas in and around the homes near the BKK landfill. The Subcommittee called for a follow-up hearing to the June 3, 1983 hearing, and invited EPA Administrator Ruckelshaus to appear before the Subcommittee to provide a summary of events, and to report on EPA's response to these critical developments.

While EPA Administrator Ruckelshaus did not appear before the Subcommittee, EPA officials from Washington, D.C. and Region IX in San Francisco appeared and answered questions from members of the Subcommittee in a special hearing held on July 31, 1984. In September 1984, EPA reached an agreement with the State of California and the BKK facility regarding the continued operation of this landfill. It was determined that BKK would withdraw its application to continue receiving hazardous waste, but would continue to accept municipal non-hazardous waste. BKK is under stringent orders from the EPA and the State of California to collect escaping gases and to monitor the off-site migration of leachate. In addition, BKK has been required to complete a site characterization study of the landfill area.

During the course of the hearings on the situation in West Covina, it became apparent that there were no studies being done on the potential health effects which might be experienced by those who work in and live near hazardous waste landfills. 1984 saw the Congress reauthorize the Resource Conservation and Recovery Act (RCRA). During House consideration of this legislation, H.R. 2867, Congressman Esteban Torres introduced an amendment which was adopted by the House and which addressed the need for such studies. The provision, now a part of Public Law 98-616, requires the owners or operators of hazardous waste facilities to submit, with their permit applications, information about the potential for public exposure to the hazardous substance being processed at their facilities. The information will then be transmitted to the Agency for Toxic Substances and Disease Registry (ATSDR). If the ATSDR determines that there might be a substantial risk, they can perform a health assessment.

II. Energy

A. Oil Company Mergers: The Petroleum Product Distribution Chain

In the first few months of 1984, three major oil company mergers were approved by the Federal Trade Commission. These "mega-mergers" changed longstanding relationships between suppliers and their customers, namely, the small business retailers.

The Subcommittee held two hearings (one in Washington, D.C. and one in Jefferson City, Missouri), and heard from witnesses representing the FTC, independent refiners, jobbers, service station dealers, and truckstop operators. The hearings focused primarily on the Texaco-Getty merger, where Getty, a major oil company with an established reserve of crude and a history of supplying the independent community, was being acquired by Texaco, another major oil company, but with a strong branded network. The original consent decree required the acquiring Texaco to disconnect from a major midwest refinery and a 1900 retail outlet chain which serves the Midwest. The Standard Oil of California and Gulf merger also involved the chain of supply to thousands of retail stations. The Subcommittee was concerned that this action could force small independents out of business and jeopardize the flow of product to large areas.

From the evidence, some Subcommittee members concluded that the FTC had overlooked the fate of the small business served by the majors who depend on a strong supplier to stay in business. The Chairman commented to the FTC and by prior agreement, included the hearing record in the comments on the proposed consent decree. As a result of the two hearings, the FTC agreed to make the record part of the comments on which to base their final rules. The final consent decree in both the SOCAL-Gulf and Texaco-Getty mergers contained protections for the independent refiners, retailers, and truckstop operators.

B. Subcommittee Field Hearing in Abilene, Texas on July 11, 1984

A field hearing was held in Abilene, Texas on July 11, 1984 for the purpose of gathering information which could be used by the members of the Small Business Committee in forming an agenda for the 99th Congress. The Subcommittee purposely did not choose to focus on any one particular area, but instead chose to provide an open forum in which individuals within the small business community could express their concerns and ideas for improvement or change.

The Subcommittee took testimony from individuals within the stripper oil industry who provided their own perspective as to how the United States can increase production from stripper well properties (those marginal-producing properties which yield ten barrels or less of oil per day), thus lessening U.S. dependence on foreign sources of energy. Representatives from the grain elevator industry offered testimony regarding the Occupational Safety and Health Administration's proposed standards for grain handling facilities.

In addition, the Subcommittee received testimony from individuals who discussed miscellaneous small business problems. Of particular interest was testimony received from an independent phar-

macist regarding predatory pricing practices by some pharmaceutical companies. Under this practice, drug manufacturers vary the prices of the products they sell to hospitals, drug chains, and local independent pharmacies.

III. The 'PIK' Program and Agricultural Support Businesses

In 1983, the Federal Government instituted the Payment in Kind land diversion program (commonly called PIK) which reduced existing surpluses of stored grain by taking approximately one third of the Nation's cropland out of production for one year. The PIK program also caused hardship to thousands of small businesses that support farmers and are vital to our continued leadership in world productivity.

Hearings held by the Subcommittee on April 28, 1983 established that many of these businesses, such as fertilizer preparers and spreaders, or crop harvestors had large fixed investments that required payments regardless of income. Still other groups, including chemical suppliers, fuel suppliers, and farm machinery retailers (just to name a few) could have reduced their inventories and retrenched to avoid major problems but were not provided sufficient notice by the Government to do so before their purchases in anticipation of the coming season were made. As a result, some businesses have suffered damages from which they may never recover.

Based on these hearings and a variety of information submitted for the record, the Small Business Committee then supported legislation (which has now become law as sections 302 and 308 or the Omnibus Reconciliation Act of 1984) that re-activated the section 7(b)3 loan program of the Small Business Act and clarified that the PIK program is to be considered Government action from which damage has resulted for the purposes of qualifying for the loan.

Since the passage of P.L. 98-270, the Small Business Administration has not issued regulations to implement the program.

SUBCOMMITTEE ON TAX, ACCESS TO EQUITY CAPITAL AND BUSINESS OPPORTUNITIES

The following is an outline of the Subcommittee's activities in the 98th Congress.

A. DISC and Export Tax Incentives

American industry has traditionally grown and prospered due to its large domestic market. Despite this fact, our industrial base is entering into a new era. In recognition of the vibrancy of the U.S. marketplace, foreign companies are increasing their shipment of goods to our shores. Our Nation's industrial base must now respond to an increasingly competitive global economy. Based on this situation, the Subcommittee conducted investigatory hearings on April 7, 1983 and March 21, 1984 on Tax Proposals to Foster Small Business Exports.

The U.S. Department of Commerce indicated that American exports declined last year by $11 billion to approximately $200 billion during a so-called period of economic expansion. This situation resulted in the United States importing about $60.6 billion more in goods than it exported in 1983. Moreover, the trade deficit could

rise to about $130 billion by the end of 1984. Many commentators suggest that this increased level of imports to the United States will result this year in the loss of approximately 2 million jobs.

The erosion of our competitive position overseas cannot continue. In this context, the Subcommittee conducted investigatory hearings on tax proposals to foster small business exports. Witnesses discussed the impact on small business of various proposals to replace the existing domestic international corporation (DISC) tax incentive.

DISC was enacted in 1971, with the objective of stimulating exports through a lowering of the effective tax rate on export income. With respect to its impact on the American economy, there were 8,665 DISC's operating in 1981, with total export gross receipts of $154 billion. This is an increase of approximately $22 billion in export gross receipts from the previous year.

Nevertheless, almost since its enactment, the European Community has charged that DISC is an illegal subsidy for purposes of the General Agreement on Tariffs and Trade (GATT). As a result of this controversy, the administration has urged the Congress to adopt legislation which it believes meets the concerns of the European Community and the objectives of GATT.

The Administration's solution to the so-called GATT problem was enacted into law as part of the Deficit Reduction Act of 1984. In order to receive a tax exemption for a portion of its foreign trading income, this provision would require an American company to establish a subsidiary overseas called a foreign sales corporation (FSC). This approach generally requires a company to maintain records and operate a permanent office outside the U.S. The overseas office would also be required to carry out certain economic processes abroad.

For the purpose of reducing some of the compliance and complexity problems for small firms, corporations with less than $5 million in export gross receipts may elect to become a small FSC. A small FSC is not required to satisfy the foreign presence and economic process tests required by the general provisions. As an alternative, the Deficit Reduction Act permits a small DISC to continue to defer income attributable to $10 million or less of export gross receipts. An interest charge that is tied to the T-bill rate is imposed on the amount of tax deferred by a small DISC.

Under the Administration's original proposal, firms with less than $2.5 million in export gross receipts qualified for the small FSC provision. Although the Subcommittee was successful in getting the threshold raised to $5 million, Chairman Nowak and other Committee members advocated raising the exemption level to $10 million for smaller firms. The Subcommittee will continue to monitor the new law to ensure that it meets the concerns of the small business person.

B. Employment and Investment Incentive For Small Business in Distressed Areas

This country is currently undergoing major structural changes marked by increased automation and a decline of our heavy industrial base. As a result of this structural transformation, many Americans have been laid off or face imminent layoff, through no

fault of their own, and are increasingly experiencing difficulties in matching their own present skills with existing employment opportunities. The magnitude of the problem is illustrated by a Congressional Budget Office study. Applying various definitions for dislocated workers, the CBO claims that the number of dislocated workers could rise as high as 2.2 million or 20% of all employed workers. In order to spur the economic revitalization of our older urban areas, the Subcommittee conducted a hearing on this topic on April 27, 1983.

Another pressing problem facing this Nation, which is at least partially attributable to the underlying structural changes in the economy and decline in our industrial base, is the deteriorating economic strength of many older urban centers.

The Administration has responded to this dilemma by proposing an urban policy strategy which is patterned after the so-called "Enterprise Zone" concept. While it is important that the Administration recognizes the need to provide some economic stimulation to the country's urban centers, it is imperative that we realize that proposals which attempt to encourage business expansion in distressed areas merely by providing tax and regulatory relief are too narrow in focus.

Since the Administration is pursuing a policy of cutting overt Federal programs, tax incentives (by necessity) become an important tool to enhance business internal capital formation. Indeed, Chairman Nowak has long been a proponent of tax relief measures as a means to alleviated the cash flow problems of the small business community. However, Nowak maintains that tax incentives alone will not cure our urban ills.

What is needed, therefore, is a well balanced plan which combines tax and business development incentives. For example, start-up and early stage development firms will derive no benefit from tax breaks when as a general rule, they experience little or no profitability in their first several years of operation.

Therefore, an essential component in any meaningful plan to encourage newly formed and growing small firms to locate and expand in distressed areas, is a measure to provide up front monies for seed and working capital. In addition, to foster the infusion of needed capital into all firms operating in declining areas, it is important to provide investor incentives both for individuals and organized venture capitalists.

As further stimulus to attract business investment and expansion in designated areas, a viable program must include provisions designed to maintain and improve the rapidly decaying infrastructure of areas suffering from long-term economic deterioration. In order to encourage entrepreneurs to locate and remain in an area, they must be assured of a healthy commercial environment which necessitates a sound infrastructure base.

In conclusion, it is necessary to create an awareness on the Congress that any plan to revitalize our Nation's distressed areas must be comprehensive in nature. In addition to tax and regulatory relief, therefore, a well balanced program should concentrate on implementing provisions designed to enhance the external capital formation needs of the business community, to maintain and improve the local infrastructure base, to utilize past proven economic

development tools and to develop a training and job creation strategy for the Nation's displaced workers. The Subcommittee is committed to this well balanced approach.

C. Incentives for Startups and Venture Capital

The Subcommittee explored the economy's structural transformation at its June 22, 1983 hearing. This transformation should have dramatic impact on our workforce and on what constitutes the United States industrial agenda for the remainder of this decade.

In this context, the Subcommittee supports the notion of a comprehensive industrial strategy that would not only help revitalize our auto and steel industries, but which would also foster entrepreneurship.

This strategy must also take into account the evolutionary changes occurring with respect to American financial institutions. For example, in addition to making home mortgages, savings and loan institutions currently have the administrative authority to make consumer loans. Further, banks now have the ability to offer money market accounts to depositors. Another aspect of financial institution deregulation is that many banks and brokerage houses want the authority to provide the financial services offered by the other.

Despite all of these evolutionary trends occurring in the economy, little attention is being given to their impact on the ability of smaller firms to obtain an adequate source of capital at a reasonable cost.

A national commitment to the fostering of startups and venture capital is one important avenue of meeting the capital needs of small and medium sized firms. This commitment can be met through such incentives as a capital gains rollover proposal or capital gains reduction targeted to investments made in startups.

D. H.R. 4773, The Small Business Secondary Market Improvements Act of 1984

Improving the operations of the SBA secondary market was the topic for legislative hearings on September 28, 1983 and February 29, 1984. In conjunction with these hearings, Mr. Nowak and other Committee members introduced H.R. 4773. The bill was ultimately signed into law by the President in July 1984. The legislation is designed as an important means of ensuring that small business continues to have access to debt capital at reasonable cost.

The secondary market is an integral component of the 7(a) guaranteed loan program. In operation since 1972, the secondary market brings private and public interests together by enabling lenders to sell the guaranteed portion of an SBA loan to an investor. This process provides the lender with an increase in liquidity and as a result, enables it to make further loans to the small business community. In fact, a recent issue of Inc. Magazine calls the secondary market "probably the most significant contribution that SBA has made to small business capital formation . . ."

Nevertheless, the secondary market for SBA guaranteed loans is not widely utilized nor has it reached its potential. One estimate

suggests that less than 25% of 7(a) loans are currently sold through the operations of the secondary market.

H.R. 4773 builds on the inherent strengths of the guaranteed loan program by providing for certain technical improvements in the operations of the SBA Office of Secondary Market Operations. In specific, H.R. 4773 would permit the pooling of SBA guaranteed loans in large homogeneous certificates. These "pooled" loans could then be offered to institutional investors in an analogous way to the operations of the secondary market for mortgages. The legislation is also designed to facilitate a more effective oversight of the SBA secondary market program itself. This latter provision mandates that the SBA Administrator develop such administrative procedures as are necessary for the promotion and effectiveness of the program.

E. Inventory Accounting and Capital Formation

At its October 5, 1983 hearing, the Subcommittee received testimony on the importance of inventories as a balance sheet item to small business.

A variation in inventory pricing can have a direct and immediate impact on its taxable income. Nevertheless, smaller firms find it difficult to administer or to pay for the detailed recordkeeping needed to implement the preferred method, the last-in, first-out (LIFO) method.

The need for inventory tax reform is no different than the need for accelerated depreciation reform. Through the enactment of the so-called Economic Recovery Tax Act of 1981, capital intensive firms benefited from the dramatic changes in the tax treatment of depreciable assets as reflected by ACRS, the accelerated cost recovery cost recovery system. The general rational for ACRS was to provide for an increase in the cash flow of these capital intensive firms. Similarly, inventory reform is viewed as an important means of boosting the internal cash flow of small wholesalers and retailers.

Getting tax professionals to focus on inventory reform has not been an easy task. It was this Subcommittee that conducted the first hearings ever held on the issue. Based on those hearings and others, Chairman Nowak testified before the Ways and Means Committee during the 1981 tax debate. As part of his comprehensive capital formation package for small business Nowak urged the tax writing committees to adopt across-the-board simplification of inventory accounting methods.

ERTA did ultimately include a small measure of inventory tax reform. However, there is more to be done. Our inventory intensive businesses must be provided with true tax equity and reform. We cannot continue to have only 2.5 percent of all wholesalers and 1.5 percent of all retailers using the preferred LIFO method, as suggested by the 1978 IRS statistics on corporations. Moreover, we must give serious consideration to adoption of such other proposals as the cash method of accounting and the implementation of an objective standard for the treatment of excess or obsolete inventory.

F. Current Trends in the Financial Services Industry

The continued safety and soundness of our Nation's banking system is critical to the economy as a whole, but is especially significant to the future hopes of the entrepreneur. For example, available statistics indicate that small firms are almost entirely dependent on commercial bank lending as a means to obtain external capital, especially since small firms have traditionally been denied access to the commercial paper and bond markets. In fact, a survey of bankers by the Interagency Task Force on Small Business Financing indicated that small firms obtain approximately 70 percent of their credit from commercial banks.

It is this critical reliance by the small business community on commercial bank credit that led the Subcommittee to initiate its investigation of the evolving bank deregulation scenario on October 18, 1983 and September 6, 1984. Through this investigatory process, the Subcommittee became aware of some specific concerns expressed by witnesses regarding the influence that the basic changes in our financial structure would have on small firms.

One of the significant findings of the Subcommittee was the fact that there is a critical shortage of data concerning small business borrowing, which renders comprehensive analysis of the availability of credit to small firms extremely difficult. Another topic of concern derived from previous testimony was the future viability of community based banks, particularly in view of the increased pressure to eliminate interstate banking restrictions. Small business borrowers have consistently maintained that their credit needs have been best served by a banker who is familiar with their business operations and the community in which they do business. A final source of concern expressed was the proposition that small business loans are perceived by many, including bank examiners, as being inherently more risky. Based on this presumption, the small business borrower would necessarily experience a greater degree of difficulty in obtaining needed capital.

The most recent developments in the financial community have aroused serious questions as to the continued stability of the banking system generally. For example, the near failure and rescue of the Continental Illinois Bank sent shock waves throughout the financial community. Many financial analysts were disturbed by the high level of Federal commitment that was required to save a failing major money center bank. In addition, the small business community, though extremely concerned over the Continental crisis, has become increasingly wary about the fact that small banks are allowed to fail. For example, the record level of 54 bank failures alone represents the highest rate of failures since 1939. In addition, recent statistics indicate that over 700 banks have been listed as "troubled" by Federal regulators, requiring greater supervision by these regulators.

A further example of the weakened confidence concerning investments in depository institutions is the recent crisis at Financial Corporation of America, which owns the Nation's largest savings and loan association. As a result of new deregulation powers, the assets of Financial Corporation have grown from only $6.6 billion at the end of 1982 to $37.7 billion in June 1984. The recent troubles

experienced by Financial Corporation of America demonstrate the significant risk of the heavy reliance of financial institutions on institutional depositors, who generally shift deposits from institution to institution in an effort to derive the greatest yield.

The ultimate goal of bank deregulation was to open competition while maintaining the confidence, stability and integrity of our banking system. However, as the realities of deregulation unfold, the Subcommittee contends that, there is a critical need to analyze present structural changes in the financial system and to formulate an overall strategy for an orderly transition. It is essential that we closely scrutinize these occurrences so that future policy implementation will reflect the views and concerns of the small business community, including small banks.

G. Small Business and the Tax Reform Debate: IRS Compliance Procedures

As we move toward the next session of Congress, we are repeatedly hearing calls for simplifying the Internal Revenue Code. In this context, the Subcommittee conducted a hearing on October 3, 1984 on the topic of IRS compliance procedures.

The Subcommittee generally supports the notion of tax simplification and reform. Nevertheless, the 1985 tax reform debate should closely consider the needs and burdens placed upon small firms. Substantive measures of relief should be considered and targeted to small business so that it can utilize increases in its cash flow for reinvestment and expansion purposes.

It must also take into account the paperwork and recordkeeping burdens facing the small business person, as well as his ability to implement a proper business plan. In essence, the discussions on tax reform should include consideration of IRS compliance procedures. The 1983 SBA Office of Advocacy Report on Small Business Paperwork, Problems and Progress aptly points out the potential compliance burdens placed on small business by the Tax Code. It is noted that out of a total Information Collection Budget for the entire Federal Government of 1.1 billion hours, the IRS accounted for 606.3 million burden hours during Fiscal Year 1983. This amounts to more than half of the original Collection Budget.

A National publication recently reported that the IRS received some 600 million reporting documents in 1982. With an ever-increasing volume of reporting documents, there is a greater likelihood of computer failure and of IRS processing mistakes. On the other hand, more extensive reporting requirements could mean the payment of larger and larger accounting and legal fees by the small business person.

The Wall Street Journal recently commented on a business concern that apparently underreported its 1981 estimated tax payments by the total sum of four dollars and thirty six cents. It mentions that an IRS private ruling concluded that the firm owed a penalty of $3,573 for the underpayment of its 1981 estimated tax. The agency noted in the ruling that the company was notified of the underpayment and did not act on it. Under the circumstances, the IRS may have acted prudently and responsively. However, the Congress should review various ways of reducing such penalties when compared to the magnitude of the offence involved.

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Besides penalty adjustments, one of the biggest complaints that small business has with the Tax Code involves payroll tax compliance. Since small business is generally more labor intensive than its larger business counterparts, payroll taxes impose a higher burden of compliance on smaller firms than many other provisions of the Tax Code. In general, a business is required to make payroll tax deposits as often as it pays its staff, which is as often as four times a month.

Chairman Nowak introduced H.R. 4521, which (among other provisions) would permit businesses with under $5,000 in payroll taxes per month to make its payroll deposits on a once a month basis. This proposal could reduce the compliance burdens of businesses that pay as much as $300,000 in salaries to its employees per year.

In the context of the 1985 tax reform debate, the Subcommittee intends to advocate simplification of payroll deposit requirements and other measures designed to reduce the recordkeeping burdens placed upon small business persons. Such proposals should have minimal impact on Federal revenues and at the same time, permit the small business owner to spend more time at actually running the day to day operations of his firm.

SUBCOMMITTEE ON EXPORT OPPORTUNITIES AND SPECIAL SMALL BUSINESS PROBLEMS

The following is a brief description of the Subcommittee's activities during the 98th Congress.

A. Exports

1. EXIMBANK.—The Subcommittee devoted a great deal of its schedule and time to the development of export markets for small business. Its first major initiative was the creation of amendments to the reauthorization of the Export-Import Bank of the United States. The amendments, called for a more competitive bank which included the authority to utilize mixed credits. It also called for a program at the bank to develop assistance for small business exports including a set-aside of a percentage of the Bank's funds exclusively for small business.

The Subcommittee presented the amendments to the House Banking Committee members and the Senate members to assure their passage. The above described amendments are now a part of the bank's charter.

In connection with the above initiative the Subcommittee held a field hearing on July 8, 1983 and in Washington on September 16 and October 26, 1983. The October 26 hearing was a strenuous oversight hearing with members of EXIMBANK. The Senate followed up with a similar hearing on May 10, 1984 at which the Subcommittee members and the staff assisted.

2. State and Local Export Efforts.—For the last few years the Subcommittee has been impressed with the numerous trade initiatives which are occurring in the State, local and private sector areas. Unfortunately, there has been little, if any, notice of this activity on the Federal level, particularly among our trade decision makers. As a result, the Subcommittee staff was asked to compile a report on the subject.

To assist them in this time-consuming task an unpaid intern was brought on-board. The intern, Mr. Steven Koppel, is a third year student at the National Law Center of George Washington University.

This report was not intended to be an all-inclusive one. Rather it is the first step. However, it does present a fairly specific picture of what export activity is going on in the country at the state and local level. The report is titled "State, Local, and Private Sector Small Business Export Initiatives."

3. Foreign Trade Zones and Export Initiatives.—The Subcommittee held a field hearing on July 10, 1984 in Dallas, Texas to review the operation of the Dallas/Fort Worth Airport's Foreign Trade Zone and on exports from that area in general. Testimony was received from James Sanders, Administrator of the Small Business Administration as well as from the Department of Commerce, the State of Texas, the operators of the Foreign Trade Zone, private financiers and finally those small businesses that are making use of the trade zone.

During the hearing, the Subcommittee also received testimony about the difficulties that small businesses who want to export face in general and what information and assistance the Government can provide to assist them.

Finally, the Committee received recommendations from their witnesses about steps that could be taken legislatively or administratively to improve our small business export capability.

B. Opinion Molder Rule

Representative Joseph Addabbo introduced H.R. 1157 which was referred to the Subcommittee. The bill would restrict the authority of the Small Business Administration to deny financial assistance to small business concerns solely because the primary business operations of such concerns relate to the communication of ideas. The purpose is to change the current SBA policy.

The "opinion molder" policy was established by the SBA Loan Policy Board at the inception of the Agency, continuing the same policy established by its predecessor, the Reconstruction Finance Corporation. This rule is contained in 13 CFR Part 120.2(d)(4) and prohibits help for a business "engaged in the creation, organization, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content."

The Subcommittee held hearings in Washington on November 15, 1983 and March 7, 1984. Witnesses in favor of a change of policy and witnesses who favor the status quo were heard from. The Subcommittee has come to no conclusion on the legislation.

C. Commemorative Envelope

In 1981, Representative Andy Ireland (R-Fla.) along with the other members of the Committee introduced H. Con. Res. 60 which requested the Postmaster General to consider issuing a commemorative stamp honoring small business. On May 12, 1982 Postmaster General William F. Bolger announced that the Postal Service would issue a commerative envelope in 1984.

On May 5, 1983 the Postal Service unveiled the design of the envelope. The design featured an assortment of small business signs in the top right hand corner and a view of storefronts and various businesses in the bottom left corner. Unlike previous stamped envelopes issued by the Postal Service, the small business envelope did not include embossed images. Instead, as a security measure to prevent copying, both the corner designs extended around the edge of the envelope onto the backside.

On May 7, 1984 Representative Parren Mitchell (D–MD) and Postmaster General Bolger held a press conference at which the envelope was issued. The day of issue was the first day of Small Business Week. It was also the first time the Postal Service had ever honored small businesses.

D. Other Issues

The Subcommittee has been involved in several other issues which include:

1. The continued oversight of the Regulatory Flexibility Act of 1980 and the Paperwork Reduction Act of 1980;
2. Efforts to increase Federal competition with small business in the Defense Department. Legislation was introduced to toughen the Federal False Claims Act to deter defense contracting fraud;
3. The ongoing review by the Federal Aviation Administration of its regulations which govern small aircraft parts manufacturers;
4. The work of various international trade commissions and task forces and their efforts to increase trade possibilities for small business;
5. Oversight of Federal regulations governing the Prompt Payment Act of 1981.

APPENDIXES

Public Law 98-47
98th Congress

An Act

To amend section 8(a) of the Small Business Act.

July 13, 1983
[S. 273]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Act, amendment. 15 USC 637.

SECTION 1. (a) Clause (B) of the first sentence of section 8(a)(1) of the Small Business Act is amended by striking out ", as shall be designated by the President within 60 days after the effective date of this paragraph," and inserting in lieu thereof "(other than the Department of Defense or any component thereof) as shall be designated by the President,".

15 USC 637 note.

(b) The designation of an agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

SEC. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: "No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985.".

SEC. 3. The last sentence of section 8(a)(2) is amended to read as follows: "The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985.".

Approved July 13, 1983.

LEGISLATIVE HISTORY—S. 273 (H.R. 861):

HOUSE REPORTS: No. 98-2 accompanying H.R. 861 (Comm. on Small Business) and No. 98-262 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 129 (1983):
Feb. 3, considered and passed Senate.
Feb. 15, considered and passed House, amended, in lieu of H.R. 861.
June 27, Senate agreed to conference report.
June 30, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 19, No. 28 (1983):
July 13, Presidential statement.

Public Law 98-72
98th Congress

An Act

To improve small business access to Federal procurement information.

Aug. 11, 1983
[S. 272]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8(e) of the Small Business Act is amended to read as follows:

Small Business Act, amendment. 15 USC 637.

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided,* That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

Proposed procurement action notices, publication.

15 USC 631 note.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

Procurement actions by Federal departments, notice requirements.

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or

development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclosure competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

Notice format.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act or unless a Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with, a Federal department may not commence negotiations for the award of a sole source contract or a contract that results from an unsolicited proposal for more than $1,000,000 in fiscal year 1984, for more than $500,000 in fiscal year 1985 and for more than $300,000 in fiscal year 1986 and each year thereafter unless—

15 USC 638.

"(A) the head of the procuring activity or his deputy, on a nondelegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information. Annually, each department shall report to the Congress on each negotiation above the stated amount if the head of the procuring activity or his deputy did not approve the authority to enter into such contract.

Report to Congress.

"(5) In the case of all procurement actions in excess of $25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall

promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the Commerce Business Daily.

"(6) As used in this subsection—

"(A) the term 'sole source contract' means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source. "Sole source contract."

"(B) the term 'unsolicited proposal' means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States Government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the department).". "Unsolicited proposal."

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act. 15 USC 637 note.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

Approved August 11, 1983.

LEGISLATIVE HISTORY—S. 272 (H.R. 1043):

HOUSE REPORT No. 98-262 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 129 (1983):
Feb. 3, considered and passed Senate.
Feb. 15, H.R. 1043 considered and passed House.
Mar. 8, considered and passed House, amended, in lieu of H.R. 1043.
June 27, Senate agreed to conference report; disagreed to House amendment.
Aug. 1, House agreed to conference report; receded from its amendment.

Public Law 98-177
98th Congress

An Act

To extend the Small Business Development Center program administered by the Small Business Administration until January 1, 1985.

Nov. 29, 1983
[H.R. 4013]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of Public Law 96-302 (94 Stat. 848) is amended by striking "October 1, 1984" and by inserting "January 1, 1985".

Small Business Development Center Program, extension.
15 USC 648 note.

Approved November 29, 1983.

LEGISLATIVE HISTORY—H.R. 4013 (S. 1429):

HOUSE REPORT No. 98-406 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 129 (1983):
Oct. 18, considered and passed House.
Nov. 17, considered and passed Senate.

Public Law 98-276
98th Congress

An Act

To provide for a White House Conference on Small Business.

May 8, 1984
[H.R. 5298]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "White House Conference on Small Business Authorization Act".

White House Conference on Small Business Authorization Act.
15 USC 631 note.

AUTHORIZATION OF CONFERENCE

SEC. 2. (a) The President shall call and conduct a National White House Conference on Small Business (hereinafter referred to as the "Conference") not earlier than January 1, 1985, and not later than September 1, 1986, to carry out the purposes described in section 3 of this Act. The Conference shall be preceded by State and regional conferences with at least one such conference being held in each State.

15 USC 631 note.

(b) Participants in the Conference and other interested individuals and organizations, are authorized to conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the Administrator of the Small Business Administration, and shall direct such conferences and activities toward the consideration of the purposes of the Conference described in section 3 of this Act in order to prepare for the National Conference.

State and local governments.

PURPOSE OF CONFERENCE

SEC. 3. The purpose of the Conference shall be to increase public awareness of the essential contribution of small business; to identify the problems of small business; to examine the status of minorities and women as small business owners; to assist small business in carrying out its role as the Nation's job creator; to assemble small businesses to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and encouraging the economic viability of small business and, thereby, the Nation; and to review the status of recommendations adopted at the 1980 White House Conference on Small Business.

Minorities.
Women.
15 USC 631 note.

CONFERENCE PARTICIPANTS

SEC. 4. (a) In order to carry out the purposes specified in section 3 of this Act, the Conference shall bring together individuals concerned with issues relating to small business: *Provided,* That no small business concern representative may be denied admission to any State or regional conference, nor may any fee or charge be imposed on any small business concern representative except an amount to cover the cost of any meal provided to such representative plus a registration fee of not to exceed $10.

15 USC 631 note.

(b) Delegates, including alternates, to the National Conference shall be elected by participants at the State and regional conferences: *Provided,* That each Governor and each chief executive official of the political subdivisions enumerated in section 4(a) of the Small Business Act may appoint one delegate and one alternate: *Provided further,* That each Member of the United States House of Representatives, including each Delegate, and each Member of the United States Senate may appoint one delegate and one alternate: *And provided further,* That the President may appoint one hundred delegates and alternates. Only individuals from small businesses shall be eligible for appointment pursuant to this subsection.

15 USC 633.

PLANNING AND ADMINISTRATION OF CONFERENCE

15 USC 631 note.

SEC. 5. (a) All Federal departments, agencies, and instrumentalities are authorized and directed to provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) In carrying out the provisions of this Act, the Administrator of the Small Business Administration—

(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels as authorized under section 2(b) of this Act; and

(2) is authorized to enter into contracts with public agencies, private organizations, and academic institutions to carry out the provisions of this Act.

(c) The Chief Counsel for Advocacy shall assist in carrying out the provisions of this Act by preparing and providing background materials for use by participants in the Conference, as well as by participants in State and regional conferences.

(d) Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed either from funds appropriated pursuant to this Act or the Small Business Act.

15 USC 631 note.

(e)(1) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as he may deem advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

5 USC 5101 *et seq.*, 5331.

(2) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

REPORTS REQUIRED

15 USC 631 note.

SEC. 6. Not more than six months from the date on which the National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement the recommendations of the Conference. The final report of the Conference shall be available to the public.

Public availability.

FOLLOWUP ACTIONS

SEC. 7. The Small Business Administration shall report to the Congress annually during the three-year period following the submission of the final report of the Conference on the status and implementation of the findings and recommendations of the Conference. Report. 15 USC 631 note.

AVAILABILITY OF FUNDS

SEC. 8. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, and they shall remain available until expended. New spending authority or authority to enter contracts as provided in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts. 15 USC 631 note.

(b) No funds appropriated to the Small Business Administration shall be made available to carry out the provisions of this Act other than funds appropriated specifically for the purpose of conducting the Conference. Any funds remaining unexpended at the termination of the Conference, including submission of the report pursuant to section 6, shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

SEC. 9. This Act shall become effective October 1, 1984. Effective date. 15 USC 631 note.

Approved May 8, 1984.

LEGISLATIVE HISTORY—H.R. 5298 (S. 2487):

HOUSE REPORT No. 98-652 (Comm. on Small Business).
SENATE REPORT No. 98-380 accompanying S. 2487 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Apr. 9, considered and passed House.
Apr. 11, considered and passed Senate.

Public Law 98-352
98th Congress

An Act

To amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

July 10, 1984
[S. 2375]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Secondary Market Improvements Act of 1984.
15 USC 631 note.

SECTION 1. This Act may be cited as the "Small Business Secondary Market Improvements Act of 1984".

SEC. 2. Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsections:

15 USC 634.
Regulations.

"(f)(1) The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

"(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

"(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

"(C) each loan shall have been fully disbursed to the borrower prior to any sale.

"(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

"(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 5(e), 7(a)(6), or 7(a)(8).

15 USC 636.

15 USC 634, 636.

"(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, except those under section 7(a)(13): *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

Trust certificates.

15 USC 636.

"(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

U.S. payments.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

Prohibition.

"(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

"(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(h) Upon the adoption of final rules and regulations, the Administration shall—

"(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term 'seller' does not

include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

"(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.".

SEC. 3. (a) Within ninety days after the date of enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act. Regulations. 15 USC 634 note. *Ante*, p. 329.

(b) Within nine months after the date of enactment of this Act, the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act other than as provided for in subsection (a). Regulations.

(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended, until final rules and regulations become effective. *Ante*, p. 329.

SEC. 4. Section 10 of the Small Business Act is amended by adding at the end thereof the following new subsection: Report. 15 USC 639.

"(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.".

SEC. 5. Section 4(c)(1)(B) and section 4(c)(2)(B) of the Small Business Act are each amended by inserting "5(g)," immediately after the word "sections". 15 USC 633.

15 USC 634 note.

SEC. 6. This Act does not authorize the appropriation of any funds.

Approved July 10, 1984.

LEGISLATIVE HISTORY—S. 2375 (H.R. 4773):

HOUSE REPORT No. 98-853 accompanying H.R. 4773 (Comm. on Small Business).
CONGRESSIONAL RECORD, Vol. 130 (1984):
June 21, considered and passed Senate.
June 25, considered and passed House.

Public Law 98-362
98th Congress

An Act

To amend the Small Business Act to establish a small business computer security and education program, and for other purposes.

July 16, 1984
[H.R. 3075]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Computer Security and Education Act of 1984.
15 USC 631 note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Computer Security and Education Act of 1984".

FINDING AND PURPOSES

Congress.
Science and technology.
15 USC 633 note.

SEC. 2. (a) The Congress hereby finds that—

(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

(2) such technology has permitted an increase in criminal activity against small business;

Crimes and misdemeanors.

(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

(b) The purposes of this Act are—

(1) to improve the management by small businesses of their information technology,

(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

(3) to permit cooperation with profitmaking organizations in providing management assistance to small business.

COMPUTER SECURITY AND EDUCATION ADVISORY COUNCIL

Establishment.

SEC. 3. Section 4(b) of the Small Business Act (15 U.S.C. 633(b)) is amended by adding at the end thereof the following:

"(3)(A) The Administrator shall, not later than ninety days after the effective date of the Small Business Computer Security and Education Act of 1984, establish an advisory council to be known as

Supra.

the Small Business Computer Security and Education Advisory Council (hereinafter referred to as the 'advisory council').

"(B) The advisory council shall consist of the following members:

"(i) an official of the Small Business Administration, appointed by the Administrator;

"(ii) an official of the Institute for Computer Sciences and Technology of the Department of Commerce, appointed by the Secretary of Commerce;

"(iii) an official of the Department of Justice, appointed by the Attorney General, who is knowledgeable about issues of computer security and its protection;

"(iv) an official of the Department of Defense, appointed by the Secretary of Defense, who is knowledgeable about issues of computer security;

"(v) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer hardware to small business concerns;

"(vi) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer software to small business concerns;

"(vii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer liability insurance to small business concerns;

"(viii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer security equipment and services to small business concerns;

"(ix) one individual, appointed by the Administrator, who is representative of the interests of associations of small business concerns, other than small business concerns engaging in any of the activities described in clauses (v) through (viii); and

"(x) such additional qualified individuals from the private sector, appointed by the Administrator, as the Administrator determines to be appropriate.

"(C) It shall be the function of the advisory council to advise the Administration on—

"(i) the nature and scope of computer crimes committed against small business concerns;

"(ii) the effectiveness of Federal and State law in deterring computer-related criminal activity or prosecuting computer-related crimes;

"(iii) the effectiveness of computer technology and management techniques available to small business for increasing their computer security;

"(iv) the development of information and guidelines to be made available to the Administrator to assist small business concerns in evaluating the security of computer systems; and

"(v) such other appropriate functions of the small business computer security and education program.

"(D) The Administrator shall designate one of the non-Federal members of the advisory council as its chairperson. The advisory council shall meet at least annually and at such other times as requested by the Administrator. A majority of the members of the advisory council shall constitute a quorum. Vacancies on the council shall be filled in the same manner as the original appointment.

"(E) Each member of the advisory council shall serve without additional pay, allowances, or benefits by reason of such service. Each non-Federal member shall be reimbursed for actual expenses,

including travel expenses, as authorized by section 5703 of title 5, United States Code.

"(F) Upon request of the chairperson of the advisory council, the Administrator may request directly from any Federal agency information necessary to enable the advisory council to carry out its functions under the Small Business Computer Security and Education Act of 1984. Upon the request of the Administrator, the head of such agency shall furnish to the Administrator such information, subject to the requirements of section 552 of title 5, United States Code.". Information, disclosure. *Ante*, p. 431.

COMPUTER SECURITY AND EDUCATION PROGRAM

SEC. 4. Section 4(b) of the Small Business Act (15 U.S.C. 633(b)) is further amended by adding at the end thereof the following: *Ante*, p. 431.

"(4)(A) The Administrator shall establish a small business computer security and education program to—

"(i) provide small business concerns information regarding—

"(I) utilization and management of computer technology;

"(II) computer crimes committed against small business concerns; and

"(III) security for computers owned or utilized by small business concerns;

"(ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and

"(iii) provide training opportunities to educate small business users on computer security techniques.

"(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.".

PRIVATE SECTOR COOPERATION

SEC. 5. (a) Section 8(b)(1)(A) of the Small Business Act is amended— 15 USC 637.

(1) by inserting "computer security," after "wage incentives,"; and

(2) by striking at the end thereof "Administration; and" and by inserting the following: "Administration. Such assistance also may be provided to small business concerns by the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: *Provided*, That the Administration shall take such actions as it deems appropriate to ensure that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promotion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all Prohibitions.

printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor."

Report. 15 USC 637 note.

(b) Not later than December 1, 1987 the Small Business Administration shall report to the Committees on Small Business of the Senate and the United States House of Representatives on the impact of the assistance provided in cooperation with profitmaking concerns pursuant to the amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984. The report shall include information on benefits provided to small business concerns assisted by the Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

Ante, p. 433.

COMPUTER CRIME DEFINITION

15 USC 632.

SEC. 6. Section 3 of the Small Business Act is amended by adding at the end thereof the following—

"(j) For purposes of this Act—

"(1) the term 'computer crime' means—

"(A) any crime committed against a small business concern by means of the use of a computer; and

"(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.".

EFFECTIVE DATES

15 USC 633 note.

SEC. 7. (a) This Act shall take effect on October 1, 1984.

(b) The amendments made to section 4(b)(3) of the Small Business Act by section 3 of this Act and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are repealed on October 1, 1988. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act.

15 USC 633, 637.

Approved July 16, 1984.

LEGISLATIVE HISTORY: H.R. 3075:

HOUSE REPORT No. 98-423, Pt. 1 (Comm. on Small Business).
SENATE REPORT No. 98-438 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Oct. 24, considered and passed House.
Vol. 129 (1984): May 24 considered and passed Senate, amended.
June 27, House concurred in Senate amendments with amendments; Senate concurred in House Amendments.

SMALL BUSINESS DEVELOPMENT CENTER IMPROVEMENT ACT OF 1984

Public Law 98-395
98th Congress

An Act

Aug. 21, 1984
[S. 1429]

To amend the Small Business Act to extend and strengthen the Small Business Development Center Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Development Center Improvement Act of 1984.
15 USC 631 note.
15 USC 648.

SECTION 1. This Act may be cited as the "Small Business Development Center Improvement Act of 1984".

SEC. 2. Section 21 of the Small Business Act is amended as follows:

(1) by adding at the end of paragraph (1) of subsection (a) the following: "The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.";

(2) by striking paragraph (2) of subsection (a) and inserting the following:

"(2) The Small Business Development Center Program shall be under the general management and oversight of the Administration, but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties.

"(3) Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000, whichever is greater.

"(4) In lieu of the matching funds required in paragraph (3), the Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 per centum cash and not more than 50 per centum of indirect costs and in-kind contributions as follows:

"(A) for grants for performance commencing on or after October 1, 1987 if the applicant is located in a State which received its grant for performance under this section on or before August 1, 1984;

"(B) for grants for performance commencing on or after October 1, 1988 if the applicant is located in a State which receives its initial grant for performance under this section commencing after August 1, 1984 and prior to October 1, 1986; and

"(C) for grants for performance commencing on or after October 1, 1986 if the applicant is located in a State which receives its initial grant for performance under this section commencing after October 1, 1986:

Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program: *Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000 whichever is greater.";

(3) by striking from paragraph (1) of subsection (b) "During fiscal years 1981, 1982, and 1983, financial" and by inserting in lieu thereof "Financial";

(4) by inserting after the period at the end of the first sentence of paragraph (2) of subsection (c) the following: "The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve."; Public availability.

(5) by amending subparagraph (2)(A) of subsection (c) to read as follows:

"(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;";

(6) by striking subsection (e) and inserting in lieu thereof the following:

"(e) The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers."; National Science Foundation.

(7) by striking from the second sentence of paragraph (2) of subsection (h) the word "quarterly" and inserting in lieu thereof "semiannually";

(8) by striking from paragraph (1) of subsection (i) the word "may" and inserting in lieu thereof "shall"; and

(9) by striking subsection (j) and inserting in lieu thereof the following:

"(j) Within six months of the date of enactment of the Small Business Development Center Improvement Act of 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.". Study. *Ante,* p. 1366.

SEC. 3. Section 20 of the Small Business Act is amended as follows: 15 USC 631 note.

(1) by inserting the following after the second sentence in subsection (a): "For fiscal year 1986 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to be available solely (1) to carry out the provisions and purposes of the Small Business

Ante, p. 1366.

Development Center Program in section 21, but not to exceed the level as specified in subsection (a) of such section, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in section 21(h), and (3) to reimburse centers for participation in evaluations as provided in section 21(j)."; and

(2) by adding the following new subsection:

Appropriations authorization.

"(t) There are hereby authorized to be appropriated for fiscal year 1985, $30,000,000 to be available solely (1) to carry out the provisions and purposes of the Small Business Development Center Program in section 21, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in subsection 21(h), and (3) to reimburse centers for participation in evaluations as provided in subsection 21(j)."

97 Stat. 1125.
15 USC 648 note.

SEC. 4. Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302), as amended, is further amended by striking "January 1, 1985" and by inserting in lieu thereof "October 1, 1990".

15 USC 636.

SEC. 5. Section 7(d)(1) of the Small Business Act is amended to read as follows:

"(d)(1) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act.".

Approved August 21, 1984.

LEGISLATIVE HISTORY—S. 1429 (H.R. 4013) (HR. 5334):

HOUSE REPORTS: No. 98-739 accompanying H.R. 5334 (Comm. on Small Business) and No. 98-955 (Comm. of Conference).
SENATE REPORT No. 98-309 (Comm. on Small Business).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Nov. 17, considered and passed Senate.
Vol. 130 (1984): May 14, H.R. 5334 considered and passed House; S. 1429, amended, passed in lieu.
Aug. 6, Senate agreed to conference report.
Aug. 8, House agreed to conference report.

Public Law 98-270
98th Congress

An Act

To provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1984.

Apr. 18, 1984
[H.R. 4169]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Omnibus Budget Reconciliation Act of 1983.

TITLE I—SHORT TITLE AND DECLARATION OF PURPOSE

SHORT TITLE

SEC. 101. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1983".

PURPOSE

SEC. 102. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives pursuant to directions contained in section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1984 (H. Con. Res. 91, 98th Congress), and pursuant to the reconciliation requirements which were set forth by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974. 2 USC 641.

* * * * * * * * *

TITLE III—COMMITTEE ON SMALL BUSINESS

SEC. 301. Section 7(c) of the Small Business Act is amended by adding the following:

Disaster assistance. Loans. 15 USC 636.

"(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

"(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

"(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

"(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

"(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of three years.

"(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under paragraphs 7(b) (1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further,* That the Administration, subject to the

15 USC 636.

15 USC 636.

reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing.

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.".

15 USC 631 note.

SEC. 302. Section 20 of the Small Business Act is amended as follows:

(1) by striking all of paragraph (5) of subsection (q) after the word "Administration" and by inserting the following "is authorized to make $100,000,000 in direct loans and for the programs authorized by sections 7(b)(1) and 7(b)(2) of this Act, the Administration is authorized to make $500,000,000 in direct loans."; and

15 USC 636.

(2) by adding the following new subsection:

"(t) For each of fiscal years 1985 and 1986, for the programs authorized by sections 7(b)(1) and 7(b)(2) the Administration is authorized to make $500,000,000 in direct loans and for each of such years for the programs authorized by sections 7(b)(3) and 7(b)(4) the Administration also is authorized to make $100,000,000 in direct loans.".

15 USC 647.

SEC. 303. Section 18(a) of the Small Business Act is amended by striking "October 1, 1983" and by inserting "October 1, 1986".

15 USC 636.

SEC. 304. Section 7(b) of the Small Business Act is amended as follows:

(1) by striking out the period at the end of paragraph (2) and by inserting in lieu thereof a semicolon; and

Disaster assistance. Loans.

(2) by adding after paragraph (3) the following new paragraph:

"(4) To make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall

exceed $100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.". Payment deferral.

SEC. 305. Section 20(q) of the Small Business Act is amended by striking from paragraph (5) "section 7(b)(3)" and inserting in lieu thereof "sections 7(b)(3) and 7(b)(4)". 15 USC 631 note.

SEC. 306. Paragraph (1) of section 4(c) of the Small Business Act is further amended by inserting "7(b)(4)," after "7(b)(3),". 15 USC 633.

SEC. 307. The amendments made by sections 304 and 305 of this title shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act providing such dislocation commenced since January 1, 1982. 15 USC 636 note.

SEC. 308. Section 7(b)(3) of the Small Business Act is amended as follows: 15 USC 636.

(1) by inserting "continuation of," after "in effecting"; and

(2) by inserting the following at the end of such paragraph: "For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government action; and".

SEC. 309. Section 7(c)(6) of the Small Business Act is further amended by adding the following at the end of the second proviso: "Employees of concerns sharing a common business premises shall be aggregated in determining 'major source of employment' status for nonprofit applicants owning such premises.". Employment and unemployment. *Ante*, p. 159.

SEC. 310. Section 3 of the Small Business Act is amended by adding the following new subsection at the end thereof: Agricultural cooperative. 15 USC 632. 15 USC 636.

"(j) For the purposes of section 7(b)(2) of this Act, the term 'small agricultural cooperative' means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern.".

SEC. 311. Section 7(b)(2) of the Small Business Act is amended as follows: 15 USC 636.

(1) by striking "small business concern" and inserting in lieu thereof "small business concern or small agricultural cooperative";

(2) by striking "small business concerns" and inserting in lieu thereof "small business concerns or small agricultural cooperatives"; and

(3) by striking "the concern" and inserting in lieu thereof "the concern or the cooperative".

SEC. 312. The amendments made by sections 310 and 311 of this title shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act or 15 USC 632 note. 15 USC 636.

with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act.

15 USC 636.
Effective date.
15 USC 632 note.

SEC. 313. This title shall take effect October 1, 1983.

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